100TH CONGRESS
1st Session

COMMITTEE PRINT

WMCP:
100-15

COMPILATION
OF THE
SOCIAL SECURITY LAWS

INCLUDING THE SOCIAL SECURITY ACT,
AS AMENDED, AND RELATED ENACTMENTS
THROUGH JANUARY 1, 1987

VOLUME II

COMPILED BY
THE SOCIAL SECURITY ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1987

73-802

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H782.28

COMMITTEE ON WAYS AND MEANS

DAN ROSTENKOWSKI, Illinois, *Chairman*

SAM M. GIBBONS, Florida
J.J. PICKLE, Texas
CHARLES B. RANGEL, New York
FORTNEY H. (PETE) STARK, California
ANDY JACOBS, Jr., Indiana
HAROLD FORD, Tennessee
ED JENKINS, Georgia
RICHARD A. GEPHARDT, Missouri
THOMAS J. DOWNEY, New York
FRANK J. GUARINI, New Jersey
MARTY RUSSO, Illinois
DON J. PEASE, Ohio
ROBERT T. MATSUI, California
BERYL ANTHONY, Jr., Arkansas
RONNIE G. FLIPPO, Alabama
BYRON L. DORGAN, North Dakota
BARBARA B. KENNELLY, Connecticut
BRIAN J. DONNELLY, Massachusetts
WILLIAM J. COYNE, Pennsylvania
MICHAEL A. ANDREWS, Texas
SANDER M. LEVIN, Michigan
JIM MOODY, Wisconsin

JOHN J. DUNCAN, Tennessee
BILL ARCHER, Texas
GUY VANDER JAGT, Michigan
PHILIP M. CRANE, Illinois
BILL FRENZEL, Minnesota
DICK SCHULZE, Pennsylvania
BILL GRADISON, Ohio
WILLIAM M. THOMAS, California
RAYMOND J. McGRATH, New York
HAL DAUB, Nebraska
JUDD GREGG, New Hampshire
HANK BROWN, Colorado
ROD CHANDLER, Washington

ROBERT J. LEONARD, *Chief Counsel*
M. KENNETH BOWLER, *Staff Director*
A.L. SINGLETON, *Minority Chief of Staff*

PREFACE

The Social Security Act

The original Social Security Act is P.L. 74-271 (49 Stat. 620), approved August 14, 1935. The Social Security Act has been amended, in part, a number of times. A list of the laws amending the Social Security Act is in Appendix I, Volume II, p. 839.

Administration of the Social Security Act

The Social Security Board was responsible for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of Title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of Title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now see Rehabilitation Act of 1973); and Title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were thenceforth to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946 [see Vol. II, p. 134.] transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under Title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment compensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reorganization Plan No. 2 of 1949 [see Vol. II, p. 136.].

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 [see Vol. II, p. 137.] with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by P.L. 96-88, §509, approved October 17, 1979. That public law did not amend references to the Secretary in the Social Security Act. The Department of Health and Human Services redesignation was effective May 4, 1980 (45 Federal Register 29642; May 5, 1980). The Department of Education which was established by P.L. 96-88 was activated May 4, 1980 (Executive Order 12212 of May 2, 1980; 45 Federal Register 29557; May 5, 1980).

This Compilation of the Social Security Laws

This compilation is current through January 1, 1987. This compilation contains:

Volume I

(1) Table of Contents;
(2) The Social Security Act, as in effect January 1, 1987;
(3) Internal Revenue Code—Selected Provisions; and
(4) Index to the Social Security Act.

Volume II

(1) Table of Contents;
(2) Other provisions of the Internal Revenue Code, provisions of public laws and statutes which are cited in the Social Security Act, and provisions of public laws which affect administration of the Social Security Act but do not amend it;
(3) Appendixes containing other helpful information; and
(4) Totalization Agreements.

Volume III

Provisions of the Social Security Act which have been superseded.

Effect of Compilation

This Compilation of the Social Security Laws is not prima facie evidence of the provisions of the Social Security Act or other laws or statutes which are included. This compilation has been prepared solely for convenient reference purposes.

Cautions

Although they are not a part of the text of the law, citations have been included which will enable the reader to locate the same material in the United States Code (U.S.C.). These matching citations to the United States Code are shown within brackets after the public law section, as, for example:

[Social Security Act]	Sec. 201. [42 U.S.C. 401]
[Public Law 99-509]	Sec. 9342. [42 U.S.C. 1395b-1 note].

Thus, both sections may be found in Title 42 of the United States Code, the first at section 401 and the second in the notes following section 1395b-1. "[None assigned]" means the provision is not in the United States Code, but can be found in the public law.

PROVISIONS AFFECTING SOCIAL SECURITY PROGRAMS

TABLE OF CONTENTS

VOLUME II

PROVISIONS AFFECTING SOCIAL SECURITY PROGRAMS

		Page
Code of Federal Regulations, Title 1, §305.86-1 - 305.86-3		1
Code of Federal Regulations, Title 21, §310.6		8
Code of Federal Regulations, Title 42, §405.454(j)		9
Title 3 U.S. Code	The President	10
Title 5 U.S. Code	Government Organization and Employees	11
Title 10 U.S. Code	Armed Forces	138
Title 11 U.S. Code	Bankruptcy	144
Title 14 U.S. Code	Coast Guard	144
Title 18 U.S. Code	Crimes and Criminal Procedure	146
Title 22 U.S. Code	Foreign Relations and Intercourse	161
Title 28 U.S. Code	Judiciary and Judicial Procedure	162
Title 29 U.S. Code	Labor	168
Title 31 U.S. Code	Money and Finance	169
Title 32 U.S. Code	National Guard	186
Title 37 U.S. Code	Pay and Allowances of the Uniformed Services	187
Title 38 U.S. Code	Veterans' Benefits	195
Revised Statutes of the United States, 2nd Edition, 1878		216

Public Law	*Approved*	*Short Title of Public Law*	
71-10	06-15-29	Agricultural Marketing Act	217
71-420	06-10-30	Perishable Agricultural Commodities Act, 1930	217
71-798	03-03-31	[Davis-Bacon Act][1]	217
73-30	06-06-33	Wagner-Peyser Act	219
73-479	06-27-34	National Housing Act	224
75-162	06-24-37	Railroad Retirement Act of 1974	226
75-353	08-24-37	Act of August 24, 1937 [Unemployment Compensation]	238
75-412	09-01-37	United States Housing Act of 1937	238
75-717	06-25-38	Federal Food, Drug, and Cosmetic Act	241
75-722	06-25-38	Railroad Unemployment Insurance Act	242
76-379	08-10-39	Social Security Act Amendments of 1939	243
78-410	07-01-44	Public Health Service Act	244
79-291	12-29-45	[International Organizations Immunities Act]	280
79-396	06-04-46	National School Lunch Act	280
79-733	08-14-46	[Agricultural Marketing Act of 1946]	281
80-759	06-24-48	Military Selective Service Act	281
81-171	07-15-49	Housing Act of 1949	282
81-474	04-19-50	[Navajo and Hopi Indians]	283
81-831	09-23-50[2]	Internal Security Act of 1950	283
82-183	10-20-51	Revenue Act of 1951 [Jenner Amendment]	285
82-414	06-27-52	Immigration and Nationality Act	286
83-591	08-16-54	Internal Revenue Code of 1954[3]	304
84-885	08-01-56	[State Department Basic Authorities Act of 1956]	412
86-372	09-23-59	Housing Act of 1959	412
87-293	09-22-61	Peace Corps Act	417
87-543	07-25-62	Public Welfare Amendments of 1962	419
87-781	10-10-62	Drug Amendments of 1962	419
88-352	07-02-64	Civil Rights Act of 1964	420
88-525	08-31-64	Food Stamp Act of 1977	421
88-643	10-13-64	Central Intelligence Agency Retirement Act of 1964 for Certain Employees	461

---

[1] Information within [ ] is supplied.

[2] Enactment date.

[3] P.L. 99-514, §2, provides, in part, that the Internal Revenue Title enacted August 16, 1954, may be cited as the "Internal Revenue Code of 1986".

Public Law	*Approved*	*Short Title of Public Law*	*Page*
89-73	07-14-65	Older Americans Act of 1965	462
89-97	07-30-65	Social Security Amendments of 1965	466
89-117	08-10-65	Housing and Urban Development Act of 1965	468
89-329	11-08-65	Higher Education Act of 1965	469
89-642	10-11-66	Child Nutrition Act of 1966	470
90-248	01-02-68	Social Security Amendments of 1967	477
90-321	05-29-68	Consumer Credit Protection Act	480
90-486	08-13-68	National Guard Technicians Act of 1968	487
91-173	12-30-69	Federal Mine Safety and Health Act of 1977	488
91-230	04-13-70	[Education Assistance Programs] Title VI - Education of the Handicapped Act	503
91-373	08-10-70	Employment Security Amendments of 1970	504
91-646	01-02-71	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970	510
91-648	01-05-71	Intergovernmental Personnel Act of 1970	512
92-203	12-18-71	Alaska Native Claims Settlement Act	514
92-318	06-23-72	Education Amendments of 1972	516
92-336	07-01-72	[Public Debt Limit - Extension]	518
92-463	10-06-72	Federal Advisory Committee Act	518
92-603	10-30-72	Social Security Amendments of 1972	523
93-66	07-09-73	[Cost-of-Living Increase in Social Security Benefits]	528
93-86	08-10-73	Agriculture and Consumer Protection Act of 1973	533
93-112	09-26-73	Rehabilitation Act of 1973	534
93-113	10-01-73	Domestic Volunteer Service Act of 1973	554
93-134	10-19-73	[Indians—Judgments—Indian Claims Commission]	555
93-233	12-31-73	[Social Security Benefits—Increase]	556
93-247	01-31-74	Child Abuse Prevention and Treatment Act	557
93-288	05-22-74	Disaster Relief Act of 1974	562
93-344	07-12-74	Congressional Budget and Impoundment Control Act of 1974	565
93-406	09-02-74	Employee Retirement Income Security Act of 1974	566
93-618	01-03-75	Trade Act of 1974	569
93-638	01-04-75	Indian Self-Determination and Education Assistance Act	580
94-114	10-17-75	[Indian Tribes—Submarginal Lands]	580
94-135	11-28-75	Older Americans Amendments of 1975 Title III - Age Discrimination Act of 1975	582
94-202	01-02-76	[Social Security—Hearings and Review Procedures]	584
94-375	08-03-76	Housing Authorization Act of 1976	585
94-437	09-30-76	Indian Health Care Improvement Act	586
94-505	10-15-76	[Shriners' Hospital—Inspector General]	587
94-566	10-20-76	Unemployment Compensation Amendments of 1976	591
94-581	10-21-76	Veterans Omnibus Health Care Act of 1976	596
95-30	05-23-77	Tax Reduction and Simplification Act of 1977	596
95-202	11-23-77	GI Bill Improvement Act of 1977	597
95-210	12-13-77	[Social Security—Rural Health Clinic Services]	597
95-216	12-20-77	Social Security Amendments of 1977	598
95-250	03-27-78	[Redwood National Park]	602
95-433	10-10-78	[Indian Claims Commission—Confederated Tribes and Bands of the Yakima Indian Nation]	609
95-498	10-21-78	[Pueblo of Santa Ana Indians, New Mexico]	610
95-499	10-21-78	[Pueblo of Zia, New Mexico Indians]	610
95-557	10-31-78	Housing and Community Development Amendments of 1978	611
95-588	11-04-78	Veterans' and Survivors' Pension Improvement Act of 1978	611
95-600	11-06-78	Revenue Act of 1978	613
95-608	11-08-78	Indian Child Welfare Act of 1978	614
95-630	11-10-78	Financial Institutions Regulatory and Interest Rate Control Act of 1978	620
96-88	10-17-79	Department of Education Organization Act	631

Public Law	*Approved*	*Short Title of Public Law*	*Page*
96-223	04-02-80	Crude Oil Windfall Profit Tax Act of 1980	631
96-265	06-09-80	Social Security Disability Amendments of 1980	633
96-272	06-17-80	Adoption Assistance and Child Welfare Act of 1980	634
96-422	10-10-80	Refugee Education Assistance Act of 1980	637
96-465	10-17-80	Foreign Service Act of 1980	638
96-466	10-17-80	Veterans' Rehabilitation and Education Amendments of 1980	638
96-481	10-21-80	[Small Business Export Expansion Act of 1980] Title II - Equal Access to Justice Act	639
96-499	12-05-80	Omnibus Reconciliation Act of 1980	640
96-598	12-24-80	[Tread Rubber Excise Tax Refunds]	643
97-35	08-13-81	Omnibus Budget Reconciliation Act of 1981	644
97-92	12-15-81	[Continuing Appropriations for Fiscal Year 1982]	659
97-123	12-29-81	[Amendments to P.L. 97-35]	660
97-127	12-29-81	Czechoslovakian Claims Settlement Act of 1981	660
97-248	09-03-82	Tax Equity and Fiscal Responsibility Act of 1982	661
97-253	09-08-82	Omnibus Budget Reconciliation Act of 1982	675
97-276	10-02-82	[Continuing Appropriations for Fiscal Year 1983]	677
97-300	10-13-82	Job Training Partnership Act	678
97-362	10-25-82	Miscellaneous Revenue Act of 1982	680
97-372	12-20-82	[Shawnee Tribe of Indians]	681
97-376	12-21-82	[Miami Tribes of Indians]	681
97-377	12-21-82	[Further Continuing Appropriations for Fiscal Year 1983]	682
97-402	12-31-82	[Clallam Tribe of Indians]	683
97-403	12-31-82	[Pembina Chippewa Indians]	684
97-404	12-31-82	[Job Training Partnership Act, Amendments]	684
97-408	01-03-83	[Blackfeet and Gros Ventre Tribes of Indians]	685
97-414	01-04-83	Orphan Drug Act	685
97-424	01-06-83	Surface Transportation Assistance Act of 1982 Title V - Highway Revenue Act of 1982	686
97-436	01-08-83	[Confederated Tribes of the Warm Springs Reservation]	687
97-448	01-12-83	Technical Corrections Act of 1982	688
97-455	01-12-83	[Temporary Payment of Disability Benefits]	688
98-4	03-11-83	Payment-in-Kind Tax Treatment Act of 1983	689
98-13	03-29-83	[Federal Supplemental Compensation Act of 1982—Prevention of Temporary Termination]	690
98-21	04-20-83	Social Security Amendments of 1983	690
98-64	08-02-83	[Per Capita Payments to Indians]	701
98-92	09-02-83	[Supplemental Unemployment Benefits—Temporary Emergency Food Assistance Act of 1983]	701
98-118	10-11-83	[Extension of "Federal Supplemental Compensation Act of 1982", P.L. 97-248, Title VI, Subtitle A]	702
98-123	10-13-83	[Red Lake Band of Chippewa Indians]	702
98-124	10-13-83	[Assiniboine Tribe of Montana]	703
98-135	10-24-83	Federal Supplemental Compensation Amendments of 1983	703
98-168	11-29-83	[Amendments to Title 5, U.S.C.]	704
98-181	11-30-83	Supplemental Appropriations Act, 1984	708
98-369	07-18-84	Deficit Reduction Act of 1984	709
98-378	08-16-84	Child Support Enforcement Amendments of 1984	722
98-432	09-28-84	Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act	725
98-460	10-09-84	Social Security Disability Benefits Reform Act of 1984	726
98-473	10-12-84	[Continuing Appropriations for Fiscal Year 1985]	730
98-500	10-19-84	Old Age Assistance Claims Settlement Act	732
98-507	10-19-84	National Organ Transplant Act	733

Public Law	*Approved*	*Short Title of Public Law*	*Page*
98-509	10-19-84	Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984	735
98-527	10-19-84	Developmental Disabilities Act of 1984	736
98-602	10-30-84	[Wyandotte Tribe of Oklahoma]	737
98-604	10-30-84	[Social Security Benefits—Increase]	738
99-107	09-30-85	Emergency Extension Act of 1985	738
99-130	10-28-85	[Mdewakanton and Wahpekute Eastern or Mississippi Sioux]	739
99-146	11-11-85	[Chippewas of Lake Superior]	739
99-177	12-12-85	[Public Debt Limit Increase] Title II - Balanced Budget and Emergency Deficit Control Act of 1985	740
99-178	12-12-85	Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986	743
99-190	12-19-85	[Continuing Appropriations for Fiscal Year 1986]	743
99-264	03-24-86	White Earth Reservation Land Settlement Act of 1985	744
99-272	04-07-86	Consolidated Omnibus Budget Reconciliation Act of 1985	746
99-319	05-23-86	Protection and Advocacy for Mentally Ill Individuals Act of 1986	763
99-335	06-06-86	Federal Employees' Retirement System Act of 1986	765
99-346	06-30-86	Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act	769
99-377	08-08-86	[Chippewas of the Mississippi]	771
99-425	09-30-86	Human Services Reauthorization Act of 1986	772
99-509	10-21-86	Omnibus Budget Reconciliation Act of 1986	773
99-514	10-22-86	Tax Reform Act of 1986	789
99-570	10-27-86	Anti-Drug Abuse Act of 1986	790
99-576	10-28-86	Veterans' Benefits Improvement and Health-Care Authorization Act of 1986	790
99-603	11-06-86	Immigration Reform and Control Act of 1986	791
99-643	11-10-86	Employment Opportunities for Disabled Americans Act	793

APPENDIXES

Page

Appendix

A 1987 Cost-of-Living Increase and Other Determinations 795
B 1986 Cost-of-Living Increase and Other Determinations 803
C Formula for Computing Benefits after 1978 827
D Average of the Total Wages for Indexing Purposes 829
E ["Old Law" Contribution and Benefit Base Special Minimum - "Year of Coverage"] 831
F Current and Past Medicare Cost-Sharing and Premium Amounts 833
G Medicare Program; Payment to Hospices 835
H Cross Reference Table [Social Security Act — U.S. Code] 837
I Laws Amending the Social Security Act 839

J NORTHERN MARIANA ISLANDS 843

Public Law	*Approved*	*Short Title of Public Law*	
94-241	03-24-76	[Northern Mariana Islands]	843
95-134	10-15-77	[Insular Areas]	847
95-348	08-18-78	[Northern Mariana Islands]	848
98-213	12-18-83	[Insular Affairs]	849

Presidential Proclamations
4534 850
5207 851
5564 852

K TOTALIZATION AGREEMENTS 855

Agreement between the United States of America and
- Belgium 857
- Canada 869
- Germany 887
- Italy 901
- Norway 913
- Sweden 923
- Switzerland 933
- United Kingdom of Great Britain and Northern Ireland 943

TABLE OF CONTENTS

PROVISIONS AFFECTING SOCIAL SECURITY PROGRAMS

Page

Act of August 24, 1937 [Unemployment Compensation]; P.L. 75-353 ... 238
Adoption Assistance and Child Welfare Act of 1980; P.L. 96-272 ... 634
Age Discrimination Act of 1975, Title III; P.L. 94-135 ... 582
Agricultural Marketing Act; P.L. 71-10 ... 217
[Agricultural Marketing Act of 1946]; P.L. 79-733 ... 281
Agriculture and Consumer Protection Act of 1973; P.L. 93-86 ... 533
Alaska Native Claims Settlement Act; P.L. 92-203 ... 514
Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984; P.L. 98-509 ... 735
[Amendments to P.L. 97-35]; P.L. 97-123 ... 660
[Amendments to Title 5, U.S.C.]; P.L. 98-168 ... 704
Anti-Drug Abuse Act of 1986; P.L. 99-570 ... 790
[Assiniboine Tribe of Montana]; P.L. 98-124 ... 703
Balanced Budget and Emergency Deficit Act of 1985, Title II; P.L. 99-177 ... 740
[Blackfeet and Gros Ventre Tribes of Indians]; P.L. 97-408 ... 685
Central Intelligence Agency Retirement Act of 1964 for Certain Employees; P.L. 88-643 ... 461
Child Abuse Prevention and Treatment Act; P.L. 93-247 ... 557
Child Nutrition Act of 1966; P.L. 89-642 ... 470
Child Support Enforcement Amendments of 1984; P.L. 98-378 ... 722
[Chippewas of Lake Superior]; P.L. 99-146 ... 739
[Chippewas of the Mississippi]; P.L. 99-377 ... 771
Civil Rights Act of 1964; P.L. 88-352 ... 420
[Clallam Tribe of Indians]; P.L. 97-402 ... 683
Code of Federal Regulations, Title 1, §305.86-1—305.86-3 ... 1
Code of Federal Regulations, Title 21, §310.6 ... 8
Code of Federal Regulations, Title 42, §405.454(j) ... 9
[Confederated Tribes of the Warm Springs Reservation]; P.L. 97-436 ... 687
Congressional Budget and Impoundment Control Act of 1974; P.L. 93-344 ... 565
Consolidated Omnibus Budget Reconciliation Act of 1985; P.L. 99-272 ... 746
Consumer Credit Protection Act; P.L. 90-321 ... 480
[Continuing Appropriations for Fiscal Year 1982]; P.L. 97-92 ... 659
[Continuing Appropriations for Fiscal Year 1983]; P.L. 97-276 ... 677
[Continuing Appropriations for Fiscal Year 1985]; P.L. 98-473 ... 730
[Continuing Appropriations for Fiscal Year 1986]; P.L. 99-190 ... 743
[Cost-of-Living Increase in Social Security Benefits]; P.L. 93-66 ... 528
Crude Oil Windfall Profit Tax Act of 1980; P.L. 96-223 ... 631
Czechoslavakian Claims Settlement Act of 1981; P.L. 97-127 ... 660
[Davis-Bacon Act]; P.L. 71-798 ... 217
Deficit Reduction Act of 1984; P.L. 98-369 ... 709
Department of Education Organization Act; P.L. 96-88 ... 631
Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986; P.L. 99-178 ... 743
Developmental Disabilities Act of 1984; P.L. 98-527 ... 736
Disaster Relief Act of 1974; P.L. 93-288 ... 562
Domestic Volunteer Service Act of 1973; P.L. 93-113 ... 554
Drug Amendments of 1962; P.L. 87-781 ... 419
Education Amendments of 1972; P.L. 92-318 ... 516
[Education Assistance Programs]; Title VI - Education of the Handicapped Act; P.L. 91-230 ... 503
Emergency Extension Act of 1985; P.L. 99-107 ... 738
Employee Retirement Income Security Act of 1974; P.L. 93-406 ... 566
Employment Opportunities for Disabled Americans Act; P.L. 99-643 ... 793
Employment Security Amendments of 1970; P.L. 91-373 ... 504
Equal Access to Justice Act, Title II; P.L. 96-481 ... 639
[Extension of "Federal Supplemental Compensation Act of 1982", P.L. 97-248, Title VI, Subtitle A]; P.L. 98-118 ... 702
Fair Credit Reporting Act, Title VI; P.L. 90-321 ... 480
Federal Advisory Committee Act; P.L. 92-463 ... 518
Federal Employees' Retirement System Act of 1986; P.L. 99-335 ... 765
Federal Food, Drug, and Cosmetic Act; P.L. 75-717 ... 241
Federal Mine Safety and Health Act of 1977; P.L. 91-173 ... 488
[Federal Supplemental Compensation Act of 1982 - Prevention of Temporary Termination]; P.L. 98-13 ... 690

Page

Federal Supplemental Compensation Amendments of 1983; P.L. 98-135 703
Financial Institutions Regulatory and Interest Rate Control Act of 1978; P.L. 95-630 620
Food Stamp Act of 1977; P.L. 88-525 421
Foreign Service Act of 1980; P.L. 96-465 638
[Further Continuing Appropriations for Fiscal Year 1983]; P.L. 97-377 682
GI Bill Improvement Act of 1977; P.L. 95-202 597
Higher Education Act of 1965; P.L. 89-329 469
Highway Revenue Act of 1982, Title V; P.L. 97-424 686
Housing Act of 1949; P.L. 81-171 282
Housing Act of 1959; P.L. 86-372 412
Housing and Community Development Amendments of 1978; P.L. 95-557 611
Housing and Urban Development Act of 1965; P.L. 89-117 468
Housing Authorization Act of 1976; P.L. 94-375 585
Human Services Reauthorization Act of 1986; P.L. 99-425 772
Immigration and Nationality Act; P.L. 82-414 286
Immigration Reform and Control Act of 1986; P.L. 99-603 791
Indian Child Welfare Act of 1978; P.L. 95-608 614
[Indian Claims Commission—Confederated Tribes and Bands of the Yakima Indian Nation]; P.L. 95-433 609
Indian Health Care Improvement Act; P.L. 94-437 586
Indian Self-Determination and Education Assistance Act; P.L. 93-638 580
[Indian Tribes—Submarginal Lands]; P.L. 94-114 580
[Indians—Judgments—Indian Claims Commission]; P.L. 93-134 555
Intergovernmental Personnel Act of 1970; P.L. 91-648 512
Internal Revenue Code of 1954; P.L. 83-591 304
Internal Security Act of 1950; P.L. 81-831 283
[International Organizations Immunities Act]; P.L. 79-291 280
[Jenner Amendment]; P.L. 82-183 285
Job Training Partnership Act; P.L. 97-300 678
[Job Training Partnership Act, Amendments]; P.L. 97-404 684
Maternal and Child Health Services Block Grant Act, Title XXI; P.L. 97-35 644
[Mdewakanton and Wahpekute Eastern or Mississippi Sioux]; P.L. 99-130 739
Medicare and Medicaid Budget Reconciliation Amendments of 1985, Title IX; P.L. 99-272 746
[Miami Tribes of Indians]; P.L. 97-376 681
Military Selective Service Act; P.L. 80-759 281
Miscellaneous Revenue Act of 1982; P.L. 97-362 680
National Guard Technicians Act of 1968; P.L. 90-486 487
National Housing Act; P.L. 73-479 224
National Organ Transplant Act; P.L. 98-507 733
National School Lunch Act; P.L. 79-396 280
[Navajo and Hopi Indians]; P.L. 81-474 283
Old Age Assistance Claims Settlement Act; P.L. 98-500 732
Older Americans Act of 1965; P.L. 89-73 462
Older Americans Amendments of 1975; P.L. 94-135 582
Omnibus Budget Reconciliation Act of 1981; P.L. 97-35 644
Omnibus Budget Reconciliation Act of 1982; P.L. 97-253 675
Omnibus Budget Reconciliation Act of 1986; P.L. 99-509 773
Omnibus Reconciliation Act of 1980; P.L. 96-499 640
Orphan Drug Act; P.L. 97-414 685
Payment-in-Kind Tax Treatment Act of 1983; P.L. 98-4 689
Peace Corps Act; P.L. 87-293 417
Peer Review Improvement Act of 1982, Title I, Subtitle C; P.L. 97-248 667
[Pembina Chippewa Indians]; P.L. 97-403 684
[Per Capita Payments to Indians]; P.L. 98-64 701
Perishable Agricultural Commodities Act, 1930; P.L. 71-420 217
Protection and Advocacy for Mentally Ill Individuals Act of 1986; P.L. 99-319 763
[Public Debt Limit - Extension]; P.L. 92-336 518
[Public Debt Limit Increase]; P.L. 99-177 740
Public Health Service Act; P.L. 78-410 244
Public Welfare Amendments of 1962; P.L. 87-543 419
[Pueblo of Santa Ana Indians, New Mexico]; P.L. 95-498 610
[Pueblo of Zia, New Mexico Indians]; P.L. 95-499 610
Railroad Retirement Act of 1974; P.L. 75-162 226
Railroad Unemployment Insurance Act; P.L. 75-722 242
[Red Lake Band of Chippewa Indians]; P.L. 98-123 702

Page

[Redwood National Park]; P.L. 95-250 602
Refugee Education Assistance Act of 1980; P.L. 96-422 637
Rehabilitation Act of 1973; P.L. 93-112 534
Reorganization Plan No. 2 of 1946 134
  No. 2 of 1949 136
  No. 19 of 1950 137
  No. 1 of 1953 137
Revenue Act of 1951 [Jenner Amendment]; P.L. 82-183 285
Revenue Act of 1978; P.L. 95-600 613
Revised Statutes of the United States, 2nd Edition, 1878 216
Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act; P.L. 99-346 769
[Shawnee Tribe of Indians]; P.L. 97-372 681
Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act; P.L. 98-432 725
[Shriners' Hospital—Inspector General]; P.L. 94-505 587
[Small Business Export Expansion Act of 1980]; P.L. 96-481 639
Social Security Act Amendments of 1939; P.L. 76-379 243
Social Security Amendments of 1965; P.L. 89-97 466
Social Security Amendments of 1967; P.L. 90-248 477
Social Security Amendments of 1972; P.L. 92-603 523
Social Security Amendments of 1977; P.L. 95-216 598
Social Security Amendments of 1983; P.L. 98-21 690
[Social Security Benefits—Increase]; P.L. 93-233 556
[Social Security Benefits—Increase]; P.L. 98-604 738
Social Security Disability Amendments of 1980; P.L. 96-265 633
Social Security Disability Benefits Reform Act of 1984; P.L. 98-460 726
[Social Security—Hearings and Review Procedures]; P.L. 94-202 584
[Social Security—Rural Health Clinic Services]; P.L. 95-210 597
[State Department Basic Authorities Act of 1956]; P.L. 84-885 412
Supplemental Appropriations Act, 1984; P.L. 98-181 708
[Supplemental Unemployment Benefits—Temporary Emergency Food Assistance Act of 1983]; P.L. 98-92 701
Surface Transportation Assistance Act of 1982; P.L. 97-424 686
Tax Equity and Fiscal Responsibility Act of 1982; P.L. 97-248 661
Tax Reduction and Simplification Act of 1977; P.L. 95-30 596
Tax Reform Act of 1984, Division A; P.L. 98-369 709
Tax Reform Act of 1986; P.L. 99-514 789
Technical Corrections Act of 1982; P.L. 97-448 688
[Temporary Payment of Disability Benefits]; P.L. 97-455 688
Title 3 U.S. Code — The President 10
Title 5 U.S. Code — Government Organization and Employees 11
Title 10 U.S. Code — Armed Forces 138
Title 11 U.S. Code — Bankruptcy 144
Title 14 U.S. Code — Coast Guard 144
Title 18 U.S. Code — Crimes and Criminal Procedure 146
Title 22 U.S. Code — Foreign Relations and Intercourse 161
Title 28 U.S. Code — Judiciary and Judicial Procedure 162
Title 29 U.S. Code — Labor 168
Title 31 U.S. Code — Money and Finance 169
Title 32 U.S. Code — National Guard 186
Title 37 U.S. Code — Pay and Allowances of the Uniformed Services 187
Title 38 U.S. Code — Veterans' Benefits 195
Trade Act of 1974; P.L. 93-618 569
[Tread Rubber Excise Tax Refunds]; P.L. 96-598 643
[Unemployment Compensation]; P.L. 75-353 238
Unemployment Compensation Amendments of 1976; P.L. 94-566 591
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; P.L. 91-646 510
United States Housing Act of 1937; P.L. 75-412 238
Veterans' and Survivors' Pension Improvement Act of 1978; P.L. 95-588 611
Veterans' Benefits Improvement and Health-Care Authorization Act of 1986; P.L. 99-576 790
Veterans Omnibus Health Care Act of 1976; P.L. 94-581 596
Veterans' Rehabilitation and Education Amendments of 1980; P.L. 96-466 638

Wagner-Peyser Act; P.L. 73-30 219
White Earth Reservation Land Settlement Act of 1985; P.L. 99-264 744
[Wyandotte Tribe of Oklahoma]; P.L. 98-602 737

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirty-second Plenary Session, adopted three recommendations. The proposed recommendation regarding the split-enforcement model for agency adjudication, noticed at 51 FR 20861, was put over for consideration at a later session.

Recommendation 86-1, Nonlawyer Assistance and Representation, calls for increased opportunities for non-lawyers to assist and represent claimants in mass justice programs. Recommendation 86-2, Use of Federal Rules of Evidence in Federal Agency Adjudications, contains advice to Congress and the agencies on how the Federal Rules of Evidence may best be applied in administrative proceedings. Recommendation 86-3, Agencies' Use of Alternative Means of Dispute Resolution, urges federal agencies to make greater use of alternatives to litigation and formal adjudication, such as mediation, arbitration, minitrials, factfinding, and negotiation.

Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted June 19-20, 1986; and issued July 11, 1986.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. (5 U.S.C. 574(1).)

At its Thirty-second Plenary Session, held June 19-20, 1986, the Assembly of the Administrative Conference of the United States adopted three recommendations.

In Recommendation 86-1, the Conference calls for increased opportunities for nonlawyers to assist and represent claimants in mass justice programs, such as Social Security and immigration. Agencies are encouraged both to eliminate barriers to nonlawyer representation and to state affirmatively their intentions to permit nonlawyers to assist and represent claimants. The Conference also recognizes that agency rules of practice dealing with attorney conduct may need to be made applicable, as appropriate, to nonlawyers.

Recommendation 86-2 urges Congress not to require agencies to apply the Federal Rules of Evidence to limit the discretion of presiding officers to admit evidence in agency adjudicatory proceedings. It also recommends that agency regulations clearly confer on presiding officers discretion to exclude unreliable evidence and to apply the weighted balancing test of Rule 403 of the Federal Rules of Evidence in deciding whether to admit evidence of questionable value.

Recommendation 86-3 calls on agencies and Congress to make greater use of alternatives to litigation and trial-type hearings. More specifically, the Conference calls on Congress to act to permit executive branch officials to agree to binding arbitration as a means of resolving some controversies, describes the form these arbitration procedures should take, and suggests cases where arbitration is likely to be appropriate. The recommendation also addresses cases where Congress should (and should not) require mandatory arbitration as the sole means of resolving disputes; encourages agency use of techniques to achieve settlements, such as mediation, minitrials, and settlement judges; and suggests that agencies consider the potential for making use of private sector dispute resolution mechanisms as an alternative to direct agency regulatory action.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure, Attorneys, Nonlawyer representation, Evidence, Alternative dispute resolution; Arbitration.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:
Authority: 5 U.S.C. 571-576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.86-1 Nonlawyer assistance and representation (Recommendation No. 86-1).
305.86-2 Use of Federal Rules of Evidence in Federal agency adjudications (Recommendation No. 86-2).
305.86-3 Agencies' use of Alternative Means of Dispute Resolution (Recommendation No. 86-3).

3. Section 305.86-1 is added to Part 305 as follows:

§305.86-1 Nonlawyer assistance and representation (Recommendation No. 86-1).

A substantial number of individuals involved in federal "mass justice"[1] agency proceedings need and desire assistance[2] in filling out forms, filing claims, and appearing in agency proceedings, but are unable to afford assistance or representation by lawyers. A lack of assistance or representation reduces the probability that an individual will obtain favorable results in dealing with an agency. Further, unassisted individuals are more likely than those who are assisted to cause a loss of agency efficiency by requiring more time, effort, and help from the agency.

Federal agencies currently provide help to persons involved in agency proceedings through information given by agency personnel and through funding of legal aid programs and approval or payment of attorney fee awards. This recommendation does not deal with whether government aid may be needed for persons who cannot afford any form of assistance. This recommendation focuses on the potential for increasing the availability of assistance by nonlawyers. Federal agency experience and statistics indicate that qualified persons who are not lawyers generally are capable of providing effective assistance to individuals in mass justice agency proceedings.

While it is recognized that no established privilege protects the confidentiality of communications between nonlawyers and their clients, agencies may adopt some protections covering their own proceedings. The possible limitation of such protections does not outweigh the benefits of increased assistance and representation. Agency practices do not currently maximize the potential for free choice of assistance, and, in some instances, may hinder the availability of qualified, low-cost assistance by nonlawyers. Agencies should take the steps necessary to encourage—as well as eliminate inappropriate barriers to—nonlawyer assistance and representation.

Agencies generally have the authority to authorize any person to act as a representative for another person having business with the agency. Where an agency intends to permit nonlawyers to assist individuals in agency matters, the agency needs to state that intention affirmatively in its regulations for two reasons. First, an affirmative statement is essential, under existing case law, to protect a nonlawyer from prosecution—under state "unauthorized practice of law" prohibitions—for assisting and advising a federal client preparatory to commencing agency proceedings, as well as for advertising the availability of services. Second, an affirmative agency position is needed to overcome a common assumption of nonlawyers that agencies welcome only lawyers as representatives, and thereby to encourage an increase in the provision of nonlawyer services.

Recommendation

1. The Social Security Administration, the Immigration and Naturalization Service, the Veterans Administration, the Internal Revenue Service, and other Federal agencies that deal with a significant number of unassisted individuals who have personal, family, or personal business claims or disputes before the agency, should review their regulations regarding assistance and representation. The review should be directed toward the goals of authorizing increased assistance by nonlawyers, and of maximizing the potential for free choice of representative to the fullest extent allowed by law.

---

[1] The term "mass justice" is used here to categorize an agency program in which a large number of individual claims or disputes involving personal, family, or personal business matters come before an agency; e.g., the Old Age Survivors and Disability Insurance program administered by the Social Security Administration. To the extent that principles incorporated in this recommendation may be applicable to other programs in which nonlawyer assistance or representation is (or could be made) available, the Conference recommends the consideration of these principles by the agencies involved.

[2] The term "assistance" is used here to indicate all forms of help, including representation, that may be beneficial to a person in dealing with an agency. The term "representation" is used whenever the most likely form of assistance involves such activities as making an appearance, signing papers, or speaking for the assisted individual. Neither term is meant to be exclusive.

2. If an agency determines that some subject areas or types of its proceedings are so complex or specialized that only specially qualified persons can adequately provide representation, then the agency may need to adopt appropriate measures to ensure that nonlawyers meet specific eligibility criteria at some or all stages of representation. Agencies should tailor any eligibility requirements so as not to exclude nonlawyers (including nonlawyers who charge fees) as a class, if there are nonlawyers who, by reason of their knowledge, experience, training, or other qualification, can adequately provide assistance or representation.

3. Agencies should declare unambiguously their intention to authorize assistance and representation by nonlawyers meeting agency criteria. Where a declaration by an agency may have the effect of preempting state law (such as "unauthorized practice of law" prohibitions), then the agency should employ the procedures set out in Recommendation 84-5 with regard to notification of and cooperation with the states and other affected groups.

4. Agencies should review their rules of practice that deal with attorney conduct (such as negligence, fee gouging, fraud, misrepresentation, and representation when there is a conflict of interest) to ensure that similar rules are made applicable to nonlawyers as appropriate, and should establish effective agency procedures for enforcing those rules of practice and for receiving complaints from the affected public.

4. Section 305.86-2 is added to Part 305 as follows:

§305.86-2 Use of Federal Rules of Evidence in Federal agency adjudications (Recommendation No. 86-2).

Federal agencies have adopted hundreds of different sets of rules governing admission of evidence in formal adjudications. While those rules vary in their details, they can be placed in three general categories: (1) Rules that reflect the wide open standard of APA section 556(d); (2) rules that require presiding officers to apply the Federal Rules of Evidence (FRE) "so far as practicable;" and, (3) rules that permit presiding officers to use the FRE as a source of guidance in making evidentiary rulings. In a few instances, Congress has required the agency to adopt a standard that refers to the FRE; in other cases the agency voluntarily adopted such a standard.

Presiding officers vary substantially in the extent of their use of the FRE as a source of guidance in making evidentiary rulings. Presiding officers at agencies whose rules refer to the FRE rely on the FRE as a source of guidance much more frequently than presiding officers at agencies whose rules reflect only the APA standard. Presiding officers at agencies with rules that refer to the FRE are more satisfied with the rule they apply than presiding officers at agencies with rules that reflect only the APA standard. The relative dissatisfaction expressed by many presiding officers in the latter group seems to be based on their perception that the APA standard does not accord them sufficient discretion to engage in responsible case management. Because they perceive that they do not have the discretion to exclude evidence they consider clearly unreliable, they must devote valuable hearing and opinion-writing time to reception and consideration of such evidence.

Because the APA evidentiary standard is broadly permissive, courts routinely decline to reverse agencies that have adopted this standard on the basis of alleged erroneous admission of evidence. However, courts seem confused by the FRE "so far as practicable" evidence standard. Some courts apparently interpret it to accord near total discretion to agencies. Other courts interpret it as a mandate to comply with the FRE except in unusual cirumstances[3]. Still others apparently view the standard as a mandate to admit evidence inadmissible under the FRE except when unusual circumstances require application of the FRE.

Independent of the evidentiary standard adopted by the agency, reviewing courts apply three general rules: (1) An agency must respect evidentiary privileges; (2) an agency can be reversed if it declines to admit evidence admissible under the FRE; and (3) an agency will be reversed if it bases a finding on unreliable evidence.

The FRE "so far as practicable" standard has four significant disadvantages; (1) Courts seem confused as to what it means or how to enforce it; (2) instructing presiding officers to exclude evidence based on the standard forces them to undertake a difficult and hazardous task; (3) excluding evidence on the basis that it is inadmissible in a jury trial is totally unnecessary to insure that agencies act only on the basis of reliable evidence; and (4) agencies, like other experts, should be permitted to rely on classes of evidence broader than those that can be considered by lay jurors. Yet the APA standard alone has the disadvantage that presiding officers perceive it as an inadequate tool for effective case management, despite the fact that it permits presiding officers to use relevant parts of the FRE and scholarly texts as sources of general guidance in making evidentiary rulings in formal adversarial adjudications. Federal Rule 403 can be particularly valuable to presiding officers in discharging their case management responsibilities. That rule authorizes exclusion of evidence the probative value of which is substantially outweighed by other factors, including the consideration of undue delay. In addition, under any set of evidentiary rules, an agency can assist presiding officers in their evidentiary decisionmaking by specifying, insofar as they can be foreseen, the factual issues the agency considers material to the resolution of various classes of adjudications and the types of evidence it considers reliable and probative with respect to recurring factual issues.

---

[3] As in original. Should be "circumstances".

Recommendation

1. Congress should not require agencies to apply the Federal Rules of Evidence, with or without the qualification "so far as practicable," to limit the discretion of presiding officers to admit evidence in formal adjudications.[4]

2. Agencies should adopt evidentiary regulations applicable to formal adversarial adjudications that clearly confer on presiding officers discretion to exclude unreliable evidence and to use the weighted balancing test in Rule 403 of the Federal Rules of Evidence, which allows exclusion of evidence the probative value of which is substantially outweighed by other factors, including its potential for undue consumption of time.

3. To facilitate the efficient and fair management of the proceeding, when otherwise appropriate, an agency should announce in advance of a formal adjudication as many of the factual issues as the agency can foresee to be material to the resolution of the adjudication.

5. Section 305.86-3 is added to part 305 as follows:

§305.86-3 Agencies' use of alternative means of dispute resolution (Recommendation No. 86-3).

Federal agencies now decide hundreds of thousands of cases annually—far more than do federal courts. The formality, costs and delays incurred in administrative proceedings have steadily increased, and in some cases now approach those of courts. Many agencies act pursuant to procedures that waste litigants' time and society's resources and whose formality can reduce the chances for consensual resolution. The recent trend toward elaborate procedures has in many cases imposed safeguards whose transaction costs, to agencies and the public in general, can substantially outweigh their benefits.

A comprehensive solution to reducing these burdens is to identify instances where simplification is appropriate. This will require a careful review of individual agency programs and the disputes they involve. A more immediate step is for agencies to adopt alternative means of dispute resolution, typically referred to as "ADR," or to encourage regulated parties to develop their own mechanisms to resolve disputes that would otherwise be handled by agencies themselves. ADR methods have been employed with success in the private sector for many years, and when used in appropriate circumstances, have yielded decisions that are faster, cheaper, more accurate or otherwise more acceptable, and less contentious. These processes include voluntary arbitration, mandatory arbitration, factfinding, minitrials, mediation, facilitating, convening and negotiation. (A brief lexicon defining these terms is included in the Appendix to this recommendation.) The same forces that make ADR methods attractive to private disputants can render them useful in cases which a federal agency decides, or to which the government is a party. For these methods to be effective, however, some aspects of current administrative procedure may require modification.

It is premature to prescribe detailed procedures for a myriad of government activities since the best procedure for a program, or even an individual dispute, must grow out of its own needs. These recommendations therefore seek to promote increased, and thoughtful, use of ADR methods. They are but a first step, and ideally should be supplemented with further empirical research, consultation with experts and interested parties, and more specific Conference proposals.

Recommendation

A. General

1. Administrative agencies, where not inconsistent with statutory authority, should adopt the alternative methods discussed in this recommendation for resolving a broad range of issues. These include many matters that arise as a part of formal or informal adjudication, in rulemaking[5] in issuing or revoking permits, and in setting disputes,

---

[4] The term "formal adjudications" refers to adjudications required by statute to be determined on the record after opportunity for an agency hearing in accordance with the Administrative Procedure Act, U.S.C. 554, 556 and 557, and also includes agency adjudications which by regulation or by agency practice are conducted in conformance with these provisions. The recommendation does not apply to nonadversarial hearings. e.g., many Social Security disability proceedings.

[5] See ACUS Recommendations 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations," 1 CFR 305.82-4 and 305.85-5.

including litigation brought by or against the government. Until more experience has been developed with respect to their use in the administrative process, the procedures should generally be offered as a voluntary, alternative means to resolve the controversy.

2. Congress and the courts should not inhibit agency uses of the ADR techniques mentioned herein by requiring formality where it is inappropriate.

B. Voluntary Arbitration

3. Congress should act to permit executive branch officials to agree to binding arbitration to resolve controversies. This legislation should authorize any executive official who has authority to settle controversies on behalf of the government to agree to arbitration, either prior to the time a dispute may arise or after a controversy has matured, subject to whatever may be the statutory authority of the Comptroller General to determine whether payment of public funds is warranted by applicable law and available appropriations.

4. Congress should authorize agencies to adopt arbitration procedures to resolve matters that would otherwise be decided by the agency pursuant to the Administrative Procedure Act ("APA") or other formal procedures. These procedures should provide that—

(a) All parties to the dispute must knowingly consent to use the arbitration procedures, either before or after a dispute has arisen.

(b) The parties have some role in the selection of arbitrators, whether by actual selection, by ranking those on a list of qualified arbitrators, or by striking individuals from such a list.

(c) Arbitrators need not be permanent government employees, but may be individuals retained by the parties or the government for the purpose of arbitrating the matter.

(d) Agency review of the arbitral award be pursuant to the standards for vacating awards under the U.S. Arbitration Act, 9 U.S.C. 10, unless the award does not become an agency order or the agency does not have any right of review.

(e) The award include a brief, informal discussion of its factual and legal basis, but neither formal findings of fact nor conclusions of law.

(f) Any judicial review be pursuant to the limited scope-of-review provisions of the U.S. Arbitration Act, rather than the broader standards of the APA.

(g) The arbitral award be enforced pursuant to the U.S. Arbitration Act, but is without precedential effect for any purpose.

5. Factors bearing on agency use of arbitration are:

(a) Arbitration is likely to be appropriate where—

(1) The benefits that are likely to be gained from such a proceeding outweigh the probable delay or costs required by a full trial-type hearing.

(2) The norms which will be used to resolve the issues raised have already been established by statute, precedent or rule, or the parties explicitly desire the arbitrator to make a decision based on some general standard, such as "justice under the circumstances," without regard to a prevailing norm.

3. Having a decisionmaker with technical expertise would facilitate the resolution of the matter.

4. The parties desire privacy, and agency records subject to disclosure under the Freedom of Information Act are not involved.

(b) Arbitration is likely to be inappropriate where—

(1) A definitive or authoritative resolution of the matter is required or desired for its precedential value.

(2) Maintaining established norms or policies is of special importance.

(3) The case significantly affects persons who are not parties to the proceeding.

(4) A full public record of the proceeding is important.

(5) The case involves significant decisions as to government policy.

(6) Agency officials, and particularly regional or other officials directly responsible for implementing an arbitration or other ADR procedure, should make persistent efforts to increase potential parties' awareness and understanding of these procedures.

C. Mandatory Arbitration

7. Arbitration is not in all instances an adequate substitute for a trial-type hearing pursuant to the APA or for civil litigation. Hence, Congress should consider mandatory arbitration only where the advantages of such a proceeding are clearly outweighed by the need to (a) save the time or transaction costs involved or (b) have a technical expert resolve the issues.

8. Mandatory arbitration is likely to be appropriate only where the matters to be resolved—

(a) Are not intended to have precedential effect other than the resolution of the specific dispute, except that the awards may be published or indexed as informal guidance;

(b) May be resolved through reference to an ascertainable norm such as statute, rule or custom;[6]

(c) Involve disputes between private parties; and

(d) Do not involve the establishment or implementation of major new policies or precedents.

9. Where Congress mandates arbitration as the exclusive means to resolve a dispute, it should provide the same procedures as in Paragraph 4, above.

D. Settlement Techniques

10. In many situations, agencies already have the authority to use techniques to achieve dispute settlements. Agencies should use this authority by routinely taking advantage of opportunities to:

(a) Explicitly provide for the use of mediation.

(b) Provide for the use of a settlement judge or other neutral agency official to aid the parties in reaching agreement.[7] These persons might, for instance, advise the parties as to the likely outcome should they fail to reach settlement.

(c) Implement agreements among the parties in interest, provided that some means have been employed to identify other interested persons and afford them an opportunity to participate.

(d) Provide for the use of minitrials.

(e) Develop criteria that will help guide the negotiation of settlements.[8]

11. Agencies should apply the criteria developed in ACUS Recommendations 82-4 and 85-5, pertaining to negotiated rulemaking[9], in deciding when it may be appropriate to negotiate, mediate or use similar ADR techniques to resolve any contested issue involving an agency. Settlement procedures may not be appropriate for decisions on some matters involving major public policy issues or having an impact on persons who are not parties, unless notice and comment procedures are used.

12. Factors bearing on agency use of minitrials as a settlement technique are:

(a) Minitrials are likely to be appropriate where—

(1) The dispute is at a stage where substantial additional litigation costs, such as for discovery, are anticipated.

(2) The matter is worth an amount sufficient to justify the senior executive time required to complete the process.

(3) The issues involved include highly technical mixed questions of law and fact.

(4) The matter involves materials that the government or other parties believe should not be revealed.

(b) Minitrials are likely to be inappropriate where—

(1) Witness credibility is of critical importance.

(2) The issues may be resolved largely through reference to an ascertainable norm.

(3) Major questions of public policy are involved.

13. Proposed agency settlements are frequently subjected to multiple layers of intra-agency or other review and therefore may subsequently be revised. This uncertainty may discourage other parties from negotiating with federal officials. To encourage settlement negotiations, agencies should provide means by which all appropriate agency decisionmakers are involved in, or regularly apprised of, the course of major negotiations; agencies should also endeavor to streamline intra-agency review of settlements. These efforts should serve to ensure that the concerns of interested segments of the agency are reflected as early as possible in settlement negotiations, and to reduce the likehood[10] that tentative settlements will be upset.

14. In cases where agencies must balance competing public policy interest, they should adopt techniques to enable officials to assess, in as objective a fashion as possible, the merits of a proposed settlement. These efforts might include establishing a small review panel of senior officials or neutral advisors, using a minitrial, publishing the proposed settlement in the **Federal Register** for comment, securing tentative approval of the settlement by the agency head or other senior official, or employing other means to ensure the integrity of the decision.

---

[6] For example, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*, provides for mandatory arbitration with respect to the amount of compensation one company must pay another and yet provides no guidance with respect to the criteria to be used to make these decisions. The program has engendered considerable controversy and litigation.

[7] *See, e.g.*, the procedure used by the Federal Energy Regulatory Commission.

[8] *See* ACUS Recommendation 79-3, "Agency Assessment and Mitigation of Civil Money Penalties," 1 CFR 305.79-3.

[9] *See also*, ACUS Recommendation 84-4, "Negotiated Cleanup of Hazardous Waste Sites Under CERCLA," 1 CFR 305.84-4.

[10] As in original. Should be "likelihood".

15. Some agency lawyers, administrative law judges, and other agency decisionmakers should be trained in arbitration, negotiation, mediation, and similar ADR skills, so they can (a) be alert to take advantage of alternatives or (b) hear and resolve other disputes involving their own or another agency.

E. Private Sector Dispute Mechanisms

16. Agencies should review the areas that they regulate to determine the potential for the establishment and use of dispute resolution mechanisms by private organizations as an alternative to direct agency action. Where such use is appropriate, the agency should—

(a) Specify minimal procedures that will be acceptable to qualify as an approved dispute resolution mechanism.

(b) Oversee the general operation of the process; ordinarily, it should not review individual decisions.

(c) Tailor its requirements to provide an organization with incentives to establish such a program, such as forestalling other regulatory action, while ensuring that other interested parties view the forum as fair and effective.

Appendix—Lexicon of Alternative Means of Dispute Resolution

Arbitration. Arbitration is closely akin to adjudication in that a neutral third party decides the submitted issue after reviewing evidence and hearing argument from the parties. It may be binding on the parties, either through agreement or operation of law, or it may be non-binding in that the decision is only advisory. Arbitration may be voluntary, where the parties agree to resolve the issues by means of arbitration, or it may be mandatory, where the process is the exclusive means provided.

Factfinding. A "factfinding" proceeding entails the appointment of a person or group with technical expertise in the subject matter to evaluate the matter presented and file a report establishing the "facts." The factfinder is not authorized to resolve policy issues. Following the findings, the parties may then negotiate a settlement, hold further proceedings, or conduct more research.

Minitrial. A minitrial is a structured settlement process in which each side presents a highly abbreviated summary of its case before senior officials of each party authorized to settle the case. A neutral adviser sometimes presides over the proceeding and will render an advisory opinion if asked to do so. Following the presentations, the officials seek to negotiate a settlement.

Mediation. Mediation involves a neutral third party to assist the parties in negotiating an agreement. The mediator has no independent authority and does not render a decision; any decision must be reached by the parties themselves.

Facilitating. Facilitating helps parties reach a decision or a satisfactory resolution of the matter to be addressed. While often used interchangeably with "mediator," a facilitator generally conducts meetings and coordinates discussions, but does not become as involved in the substantive issues as does a mediator.

Convening. Convening is a technique that helps identify issues in controversy and affected interests. The convenor is generally called upon to determine whether direct negotiations among the parties would be a suitable means of resolving the issues, and if so, to bring the parties together for that purpose. Convening has proved valuable in negotiated rulemaking.

Negotiation. Negotiation is simply communication among people or parties in an effort to reach an agreement. It is used so routinely that it is frequently overlooked as a specific means of resolving disputes. In the administrative context, it means procedures and processes for settling matters that would otherwise be resolved by more formal means.

Dated: July 11, 1986.

Richard K. Berg,
General Counsel.

Code of Federal Regulations

* * * * * * *

Title 21

* * * * * * *

§310.6 Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products.

(a) The Food and Drug Administration's conclusions on the effectiveness of drugs are currently being published in the FEDERAL REGISTER as Drug Efficacy Study Implementation (DESI) Notices and as Notices of Opportunity for Hearing. The specific products listed in these notices include only those that were introduced into the market through the new drug procedures from 1938-62 and were submitted for review by the National Academy of Sciences-National Research Council (NAS-NRC), Drug Efficacy Study Group. Many products which are identical to, related to, or similar to the products listed in these notices have been marketed under different names or by different firms during this same period or since 1962 without going through the new drug procedures or the Academy review. Even though these products are not listed in the notices, they are covered by the new drug applications reviewed and thus are subject to these notices. All persons with an interest in a product that is identical, related, or similar to a drug listed in a drug efficacy notice or a notice of opportunity for a hearing will be given the same opportunity as the applicant to submit data and information, to request a hearing, and to participate in any hearing. It is not feasible for the Food and Drug Administration to list all products which are covered by an NDA and thus subject to each notice. However, it is essential that the findings and conclusions that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective be applied to all identical, related, and similar drug products to which they are reasonably applicable. Any product not in compliance with an applicable drug efficacy notice is in violation of section 505 (new drugs) and/or section 502 (misbranding) of the act.

(b)(1) An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties.

(2) Where experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs would conclude that the findings and conclusions, stated in a drug efficacy notice or notice of opportunity for hearing, that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective are applicable to an identical, related, or similar drug product, such product is affected by the notice. A combination drug product containing a drug that is identical, related, or similar to a drug named in a notice may also be subject to the findings and conclusions in a notice that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective.

(3) Any person may request an opinion on the applicability of such a notice to a specific product by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(c) Manufacturers and distributors of drugs should review their products as drug efficacy notices are published and assure that identical, related, or similar products comply with all applicable provisions of the notices.

(d) The published notices and summary lists of the conclusions are of particular interest to drug purchasing agents. These agents should take particular care to assure that the same purchasing policy applies to drug products that are identical, related, or similar to those named in the drug efficacy notices. The Food and Drug Administration applies the same regulatory policy to all such products. In many instances a determination can readily be made as to the applicability of a drug efficacy notice by an individual who is knowledgeable about drugs and their indications for use. Where the relationships are more subtle and not readily recognized, the purchasing agent may request an opinion by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(e) Interested parties may submit to the Food and Drug Administration, Center for Drugs and Biologics, Office of Compliance, HFN-300, 5600 Fishers Lane, Rockville, MD 20857, the names of drug products, and of their manufacturers or distributors, that should be the subject of the same purchasing and regulatory policies as those reviewed by the Drug Efficacy Study Group. Appropriate action, including referral to purchasing officials of various government agencies, will be taken.

(f) This regulation does not apply to OTC drugs identical, similar, or related to a drug in the Drug Efficacy Study unless there has been or is notification in the FEDERAL REGISTER that a drug will not be subject to an OTC panel review pursuant to §§330.10, 330.11, and 330.5 of this chapter.

* * * * * * *

[*Internal Reference.*—Social Security Act §1862(c)(2)(A) cites §310.6 of title 21 of the Code of Federal Regulations.]

Code of Federal Regulations

* * * * * * *

Title 42

* * * * * * *

§405.454 Payments to providers.

* * * * * * *

(j) *Periodic interim payment method of reimbursement.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and skilled nursing facility inpatient services and for both Part A and Part B home health agency services.

(1) Any participating provider that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of a home health agency, either (A) its estimated total Medicare reimbursement for Part A and Part B services is at least $25,000 a year computed under the PIP formula or (B) its estimated Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable costs,

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the program),

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis, and

(iv) The provider has repaid or agrees to repay any outstanding current financing payment in full, such payment to be made before the effective date of its requested conversion from a regular interim payment method to the PIP method.

(2) No conversion to the PIP method may be made with respect to any provider until after that provider has repaid in full its outstanding current financing payment.

(3) The intermediary's approval of a provider's request for reimbursement under the PIP method will be conditioned upon the intermediary's best judgment as to whether payment can be made to the provider under the PIP method without undue risk of its resulting in an overpayment because of greatly varying or substantially declining Medicare utilization, inadequate billing practices, or other circumstances. The intermediary may terminate PIP reimbursement to a provider at any time it determines that the provider no longer meets the qualifying requirements or that the provider's experience under the PIP method shows that proper payment cannot be made under this method.

(4) Payment will be made biweekly under the PIP method unless the provider requests a longer fixed interval (not to exceed 1 month) between payments. The payment amount will be computed by the intermediary to approximate, on the average, the cost of covered inpatient or home health services rendered by the provider during the period for which the payment is to be made, and each payment will be made 2 weeks after the end of such period of services. Upon request, the intermediary will, if feasible, compute the provider's payments to recognize significant seasonal variation in Medicare utilization of services on a quarterly basis starting with the beginning of the provider's reporting year.

(5) A provider's periodic interim payment amount may be appropriately adjusted at any time if the provider presents or the intermediary otherwise obtains evidence relating to the provider's costs or Medicare utilization that warrants such adjustment. In addition, the intermediary will recompute the payment immediately upon completion of the desk review of a provider's cost report and also at regular intervals not less often than quarterly. The intermediary may make a retroactive lump sum interim payment to a provider, based upon an increase in its periodic interim payment amount, in order to bring past interim payments for the provider's current cost reporting period into line with the adjusted payment amount. The objective of intermediary monitoring of provider costs and utilization is to assure payments approximating, as closely as possible, the reimbursement to be determined at settlement for the cost reporting period. A significant factor in evaluating the amount of the payment in terms of the realization of the projected Medicare utilization of services is the timely submittal to the intermediary of completed admission and billing forms. All providers must complete billings in detail under this method as under regular interim payment procedures.

* * * * * * *

[*Internal Reference.*—Social Security Act §1815(e)(2) cites §405.454(j) of title 42, Code of Federal Regulations.]

TITLE 3, UNITED STATES CODE

THE PRESIDENT

* * * * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

* * * * * * *

§105. Assistance and services for the President

(a)(1) Subject to the provisons[1] of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 25 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 50 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of seciton 5332 of title 5.

* * * * * * *

§106. Assistance and services for the Vice President

(a) In order to enable the Vice President to provide assistance to the President in connection with the performance of functions specially assigned to the Vice President by the President in the discharge of executive duties and responsibilities, the Vice President is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 5 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

---

[1] As in original. Probably should be "provisions".

(B) 3 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 3 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

* * * * * * *

§107. Domestic Policy Staff and Office of Administration; personnel

(a) In order to enable the Domestic Policy Staff to perform its functions, the President (or his designee) is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 6 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(B) 18 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(C) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

* * * * * * *

(b)(1) In order to enable the Office of Administration to perform its functions, the President (or his designee) is authorized—

(A) without regard to such other provisions of law as the President may specify which regulate the employment and compensation of persons in the Government service, to appoint and fix the pay of not more than—

(i) 5 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(ii) 5 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and

* * * * * * *

[*Internal Reference.*—Social Security Act §210(a)(5)(D)(iii) cites §§105(a)(1), 106(a)(1), 107(a)(1) and (b)(1) of title 3.]

TITLE 5, UNITED STATES CODE

GOVERNMENT ORGANIZATION AND EMPLOYEES

Table of Contents

CHAPTER 5—ADMINISTRATIVE PROCEDURE

Subchapter I—General Provisions

Page
Sec. 504. Costs and fees of parties 16

Subchapter II—Administrative Procedure

Sec. 551. Definitions 18
Sec. 552. Public information; agency rules, opinions, orders, records, and proceedings 19
Sec. 552a. Records maintained on individuals 23
Sec. 553. Rule making 29
Sec. 554. Adjudications 29

Page
Sec. 555. Ancillary matters 30
Sec. 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision 31
Sec. 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record 31
Sec. 559. Effect on other laws; effect of subsequent statute 33

CHAPTER 7—JUDICIAL REVIEW

Sec. 701. Application; definitions 33
Sec. 702. Right of review 33
Sec. 703. Form and venue of proceeding 33
Sec. 704. Actions reviewable 34
Sec. 705. Relief pending review 34
Sec. 706. Scope of review 34

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter I—Examination, Certification, and Appointment

Sec. 3301. Civil service; generally 34
Sec. 3302. Competitive service; rules 34
Sec. 3303. Competitive service; recommendations of Senators or Representatives 34
Sec. 3304. Competitive service; examinations 35

Subchapter III—Details

Sec. 3343. Details; to international organizations 35

Subchapter VI—Assignments to and from States

Sec. 3371. Definitions 35
Sec. 3372. General provisions 36
Sec. 3373. Assignment of employees to State and local governments 36
Sec. 3374. Assignments of employees from State or local governments 38
Sec. 3375. Travel expenses 38
Sec. 3376. Regulations 39

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

Subchapter I—Retention Preference

Sec. 3501. Definitions; application 39
Sec. 3502. Order of retention 39
Sec. 3503. Transfer of functions 40
Sec. 3504. Preference eligibles; retention; physical qualifications; waiver 40

Subchapter IV—Reemployment after Service with an International Organization

Sec. 3581. Definitions 41
Sec. 3582. Rights of transferring employees 41
Sec. 3583. Computations 42
Sec. 3584. Regulations 42

Subchapter V—Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Services

Sec. 3591. Definitions 42
Sec. 3592. Removal from the Senior Executive Service 42
Sec. 3593. Reinstatement in the Senior Executive Service 43
Sec. 3594. Guaranteed placement in other personnel systems 43
Sec. 3595. Reduction in force in the Senior Executive Service 44
Sec. 3595a. Furlough in the Senior Executive Service 45
Sec. 3596. Regulations 45

Page

Subchapter VI—Reemployment Following Limited Appointment in the Foreign Service

Sec. 3597. Reemployment following limited appointment in the Foreign Service 45

CHAPTER 51—CLASSIFICATION

Sec. 5101. Purpose 45
Sec. 5102. Definitions; application 45
Sec. 5103. Determination of applicability 47
Sec. 5104. Basis for grading positions 48
Sec. 5105. Standards for classification of positions 51
Sec. 5106. Basis for classifying positions 52
Sec. 5107. Classification of positions 52
Sec. 5108. Classification of positions at GS-16, 17, and 18 52
Sec. 5109. Positions classified by statute 52
Sec. 5110. Review of classification of positions 53
Sec. 5111. Revocation and restoration of authority to classify positions 53
Sec. 5112. General authority of the Office of Personnel Management 53
Sec. 5113. Classification records 53
[Sec. 5114. Repealed.] 53
Sec. 5115. Regulations 53

CHAPTER 53—PAY RATES AND SYSTEMS

Subchapter II—Executive Schedule Pay Rates

Sec. 5312. Positions at level I 54
Sec. 5313. Positions at level II 54
Sec. 5314. Positions at level III 54
Sec. 5315. Positions at level IV 56
Sec. 5316. Positions at level V 58
Sec. 5317. Presidential authority to place positions at levels IV and V 61

Subchapter III—General Schedule Pay Rates

Sec. 5331. Definitions; application 61
Sec. 5332. The General Schedule 61
Sec. 5333. Minimum rate for new appointments; higher rates for supervisors of prevailing rate employees 61
Sec. 5334. Rate on change of position or type of appointment; regulations 62
Sec. 5335. Periodic step-increases 63
Sec. 5336. Additional step-increases 63
[Sec. 5337. Repealed.] 64
Sec. 5338. Regulations 64

Subchapter V—Student-Employees

Sec. 5351. Definitions 64

Subchapter VI—Grade and Pay Retention

Sec. 5362. Grade retention following a change of positions or reclassification 64
Sec. 5363. Pay retention 65

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Subchapter I—Travel and Subsistence Expenses; Mileage Allowances

Sec. 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay 65

Page

CHAPTER 59—ALLOWANCES

Subchapter IV—Miscellaneous Allowances

Sec. 5948. Physicians comparability allowances 65

CHAPTER 61—HOURS OF WORK

Subchapter I—General Provisions

Sec. 6103. Holidays 67

CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

Sec. 8101. Definitions 67
Sec. 8112. Maximum and minimum monthly payments 68
Sec. 8133. Compensation in case of death 68
Sec. 8141. Civil Air Patrol volunteers 68

CHAPTER 83—RETIREMENT

Subchapter III—Civil Service Retirement

Sec. 8331. Definitions 69
Sec. 8332. Creditable service 72
Sec. 8333. Eligibility for annuity 73
Sec. 8334. Deductions, contributions, and deposits 73
Sec. 8336. Immediate retirement 73
Sec. 8337. Disability retirement 74
Sec. 8338. Deferred retirement 75
Sec. 8341. Survivor annuities 75
Sec. 8342. Lump-sum benefits; designation of beneficiary; order of precedence 77
Sec. 8345. Payment of benefits; commencement, termination, and waiver of annuity 77
Sec. 8347. Administration; regulations 79

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter I—General Provisions

Sec. 8401. Definitions 80
Sec. 8402. Federal Employees' Retirement System; exclusions 81
Sec. 8403. Relationship to the Social Security Act 82

SUBCHAPTER II—BASIC ANNUITY

Sec. 8410. Eligibility for annuity 82
Sec. 8411. Creditable service 82
Sec. 8412. Immediate retirement 84
Sec. 8413. Deferred retirement 85
Sec. 8414. Early retirement 85
Sec. 8415. Computation of basic annuity 85
Sec. 8416. Survivor reduction for a current spouse 86
Sec. 8417. Survivor reduction for a former spouse 87
Sec. 8418. Survivor elections; deposit; offsets 88
Sec. 8419. Survivor reductions; computation 88
Sec. 8420. Insurable interest reductions 88
Sec. 8420a. Alternative forms of annuities 89
Sec. 8421. Annuity supplement 89
Sec. 8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement 90
Sec. 8422. Deductions from pay; contributions for military service 91
Sec. 8423. Government contributions 92
Sec. 8424. Lump-sum benefits; designation of beneficiary; order of precedence 93

Page

SUBCHAPTER III—THRIFT SAVINGS PLAN

Sec. 8431. Definition 94
Sec. 8432. Contributions 94
Sec. 8433. Benefits and election of benefits 97
Sec. 8434. Annuities: methods of payment; election; purchase 98
Sec. 8435. Protections for spouses and former spouses 99
Sec. 8436. Administrative provisions 101
Sec. 8437. Thrift Savings Fund 101
Sec. 8438. Investment of Thrift Savings Fund 102
Sec. 8439. Accounting and information 104
Sec. 8440. Tax treatment of the Thrift Savings Fund 105

SUBCHAPTER IV—SURVIVOR ANNUITIES

Sec. 8441. Definitions 106
Sec. 8442. Rights of a widow or widower 107
Sec. 8443. Rights of a child 109
Sec. 8444. Rights of a named individual with an insurable interest 110
Sec. 8445. Rights of a former spouse 110

SUBCHAPTER V—DISABILITY BENEFITS

Sec. 8451. Disability retirement 111
Sec. 8452. Computation of disability annuity 112
Sec. 8453. Application 113
Sec. 8454. Medical examination 113
Sec. 8455. Recovery; restoration of earning capacity 113
Sec. 8456. Relationship to workers' compensation 114

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

Sec. 8461. Authority of the Office of Personnel Management 114
Sec. 8462. Cost-of-living adjustments 116
Sec. 8463. Rate of benefits 117
Sec. 8464. Commencement and termination of annuities of employees and Members 117
Sec. 8465. Waiver, allotment, and assignment of benefits 117
Sec. 8466. Application for benefits 118
Sec. 8467. Court orders 118
Sec. 8468. Annuities and pay on reemployment 118
Sec. 8469. Withholding of State income taxes 118
Sec. 8470. Exemption from legal process; recovery of payments 119

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

Sec. 8471. Definitions 119
Sec. 8472. Federal Retirement Thrift Investment Board 119
Sec. 8473. Employee Thrift Advisory Council 120
Sec. 8474. Executive Director 121
Sec. 8475. Investment policies 122
Sec. 8476. Administrative provisions 122
Sec. 8477. Fiduciary responsibilities; liabilities and penalties 122
Sec. 8478. Bonding 125
Sec. 8478a. Investigative authority 126
Sec. 8479. Exculpatory provisions; insurance 127

CHAPTER 85—UNEMPLOYMENT COMPENSATION

Subchapter I—Employees Generally

Sec. 8501. Definitions 127
Sec. 8502. Compensation under State agreement 128
Sec. 8503. Compensation absent State agreement 128
Sec. 8504. Assignment of Federal service and wages 128
Sec. 8505. Payments to States 128
Sec. 8506. Dissemination of information 129
Sec. 8507. False statements and misrepresentations 129

Page
Sec. 8508. Regulations 130
Sec. 8509. Federal Employees Compensation Account 130

Subchapter II—Ex-Servicemen

Sec. 8521. Definitions; application 130
Sec. 8522. Assignment of Federal service and wages 131
Sec. 8523. Dissemination of information 131
[Sec. 8524. Repealed.] 131
Sec. 8525. Effect on other statutes 132

CHAPTER 89—HEALTH INSURANCE

Sec. 8903. Health benefits plans 132
Sec. 8903a. Additional health benefits plans 132
Sec. 8906. Contributions 133

APPENDIX

Reorganization Plan No. 2 of 1946 134
Reorganization Plan No. 2 of 1949 136
Reorganization Plan No. 19 of 1950 137
Reorganization Plan No. 1 of 1953 137

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * * * *

Subchapter I—General Provisions

§504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency[2] was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.[3]

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.[4]

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.[5]

(b)(1) For the purposes of this section—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

---

[2] P.L. 99-80, §1(a)(2), struck out "as a party to the proceeding".
[3] P.L. 99-80, §1(a)(1), added this sentence.
[4] P.L. 99-80, §1(b), added this sentence.
[5] P.L. 99-80, §1(a)(3), added this sentence.

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;[6]

(C) "adversary adjudication" means (i)[7] an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license,[8] (ii) any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607)[9], and (iii) any hearing conducted under chapter 38 of title 31[10];[11]

(D) "adjudicative officer" means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication; and[12]

(E) "position of the agency" means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.[13]

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.[14]

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.[15]

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

---

[6] P.L. 99-80, §1(c)(1), amended subparagraph (B) in its entirety.
[7] P.L. 99-80, §1(c)(2)(A), inserted "(i)".
[8] P.L. 99-509, §6103(c)(1), struck out "and".
[9] P.L. 99-80, §1(c)(2)(B), added clause (ii).
[10] P.L. 99-509, §6103(c)(2), inserted ", and" and clause (iii).
[11] P.L. 99-80, §1(c)(2)(C), struck out "and".
[12] P.L. 99-80, §1(c)(3)(A), struck out the period and substituted "; and".
[13] P.L. 99-80, §1(c)(3)(B), added subparagraph (E).
[14] P.L. 99-80, §1(d), amended paragraph (2) in its entirety.
[15] P.L. 99-80, §1(e), amended subsection (d) in its entirety.

Subchapter II—Administrative Procedure

§551. Definitions

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided,* That the court's review of the matter shall be limited to the record before the agency.[16]

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed.[17]]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

---

[16] P.L. 99-570, §1803, amended subparagraph (A) in its entirety.

[17] P.L. 98-620, §402(2), repealed subparagraph (D).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;[18]

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.[19]

(d)[20] This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)[21] On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

---

[18] P.L. 99-570, §1802(a), amended paragraph (7) in its entirety.

[19] P.L. 99-570, §1802(b), added this subsection (c).

[20] P.L. 99-570, §1802(b), redesignated the former subsection (c) as subsection (d).

[21] P.L. 99-570, §1802(b), redesignated subsection (d) as subsection (e).

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f)[22] For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§552a. Records maintained on individuals

(a) Definitions.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) Conditions of Disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;[23]

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

---

[22] P.L. 99-570, §1802(b), redesignated subsection (e) as subsection (f).

[23] P.L. 98-497, §107(g)(1), amended paragraph (6) in its entirety.

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency Rules.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two

years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military

service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) Archival Records.—Each agency record which is accepted by the Archivist of the United States[24] for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States[25] shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) Government Contractors.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on New Systems.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) Annual Report.—The President shall annually submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year;

---

[24] P.L. 98-497, §107(g)(2), struck out "Administrator of General Services" and substituted "Archivist of the United States".

[25] See footnote 24.

(2) describing the exercise of individual rights of access and amendment under this section during such year;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(q)(1)[26] Effect of Other Laws.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.[27]

* * * * * * *

§553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[28] administrative law judge appointed under section 3105 of this title;

(3) proceeding in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

---

[26] P.L. 98-477, §2(c)(1), inserted "(1)".

[27] P.L. 98-477, §2(c)(2), added paragraph (2).

[28] As in original; should be "an".

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

§556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(b) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

* * * * * * *

§559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

* * * * * * *

CHAPTER 7—JUDICIAL REVIEW

§701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

§702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsiderations, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

* * * * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter I—Examination, Certification, and Appointment

§3301. Civil service; generally

The President may—

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

§3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, 7203, 7321, and 7322 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

§3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

§3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

* * * * * * *

Subchapter III—Details

* * * * * * *

§3343. Details; to international organizations

(a) For the purpose of this section—

(1) "agency", "employee", and "international organization" have the meanings given them by section 3581 of this title; and

(2) "detail" means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

* * * * * * *

Subchapter VI—Assignments to and From States

§3371. Definitions

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management.

§3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years.

In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.[29]

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

§3373. Assignment of employees to State and local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

---

[29] P.L. 98-146, §201, added this sentence.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

§3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

§3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

§3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

* * * * * * *

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER I—RETENTION PREFERENCE

§3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) "active service" has the meaning given it by section 101 of title 37;

(2) "a retired member of a uniformed service" means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including period of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service.

§3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C)[30] is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

§3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

§3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

* * * * * * *

---

[30] P.L. 99-251, §306(a), struck out "who is an employee in or under the Department of Agriculture".

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§3581. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department; and

(C) an employing authority in the legislative branch;

(2) "employee" means an employee in or under an agency;

(3) "international organization" means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) "transfer" means the change of position by an employee from an agency to an international organization; and

(5) "reemployment" means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

§3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization, or other benefit of any kind on account of the same injury or death, the amount thereof, is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which--

(1) an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or

(2) a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee's period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee.

§3583. Computations

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer.

§3584. Regulations

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICES

§3591. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of this title.

§3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393(d) of this title, or

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

§3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984,[31] due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.

§3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

---

[31] P.L. 98-615, §303(a), inserted "before October 1, 1984,".

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.[32]

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

§3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.[33]

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).[34]

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).[35]

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).[36]

---

[32] P.L. 98-615, §303(b), amended subsection (b) in its entirety.

[33] P.L. 98-615, §303(c)(1), struck out "is entitled" and clauses (i) and (ii) and substituted "shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.".

[34] P.L. 98-615, §303(c)(2), amended paragraph (4) in its entirety.

[35] P.L. 98-615, §303(c)(2), amended paragraph (5) in its entirety.

(d) For purposes of this section, "reduction in force" includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.[37]

§3595a. Furlough in the Senior Executive Service[38]

(a) For the purposes of this section, "furlough" means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

§3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§3597. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

* * * * * * *

CHAPTER 51—CLASSIFICATION

§5101. Purpose

It is the purpose of this chapter to provide a plan for classification of positions whereby—

(1) in determining the rate of basic pay which an employee will receive—

(A) the principle of equal pay for substantially equal work will be followed; and

(B) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service; and

(2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined by section 5102 of this title, and the various classes will be so described in published standards, as provided by section 5105 of this title, that the resulting position-classification system can be used in all phases of personnel administration.

§5102. Definitions; application

(a) For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency;
(B) the Administrative Office of the United States Courts;
(C) the Library of Congress;
(D) the Botanic Garden;
(E) the Government Printing Office;
(F) the Office of the Architect of the Capitol; and
(G) the government of the District of Columbia;

but does not include—

(i) a Government controlled corporation;
(ii) the Tennessee Valley Authority;

---

[36] P.L. 98-615, §303(d), amended subsection (c) in its entirety.
[37] P.L. 98-615, §304(b), added subsection (e).
[38] P.L. 98-615, §306(c)(1), added §3595a.

(iii) the Virgin Islands Corporation;
(iv) the Atomic Energy Commission;
(v) the Central Intelligence Agency;
(vi) the Panama Canal Commission;
(vii) the National Security Agency, Department of Defense;[39]
(viii) the General Accounting Office; or[40]
(x)[41] the Defense Intelligence Agency, Department of Defense;[42]

(2) "employee" means an individual employed in or under an agency;

(3) "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions" includes all positions which are sufficiently similar, as to—

(A) kind or subject-matter of work;
(B) level of difficulty and responsibility; and
(C) the qualification requirements of the work;

to warrant similar treatment in personnel and pay administration; and

(5) "grade" includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—

(A) level of difficulty and responsibility; and
(B) level of qualification requirements of the work;

to warrant their inclusion within one range of rates of basic pay in the General Schedule.

(b) Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency, including positions in local boards and appeal boards within the Selective Service System and employees occupying those positions.

(c) This chapter does not apply to—

[(1) Repealed.]

(2) members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980; and positions in or under the Department of State which are—

(A) connected with the representation of the United States to international organizations; or

(B) specifically exempted by statute from this chapter or other classification or pay statute;

(3) physicians, dentists, nurses, and other employees in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

(4) teachers, school officials, and employees of the Board of Education of the District of Columbia whose pay is fixed under chapter 15 of title 31, District of Columbia Code; the chief judges and the associate judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals; and nonjudicial employees of the District of Columbia court system whose pay is fixed under title 11 of the District of Columbia Code;

(5) members of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, and the Executive Protective Service; and members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title;

(6) lighthouse keepers and civilian employees on lightships and vessels of the Coast Guard whose pay is fixed under section 432(f) and (g) of title 14;

(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, and employees in the Bureau of Engraving and Printing whose duties are to perform or to direct manual or machine operations requiring special skill or experience, or to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations;

(8) officers and members of crews of vessels;

(9) employees of the Government Printing Office whose pay is fixed under section 305 of title 44;

(10) civilian professors, lecturers, and instructors at the Naval War College and the Naval Academy whose pay is fixed under sections 6952 and 7478 of title 10;

---

[39] P.L. 98-618, §502(a)(1), struck out "or" at the end of clause (viii). Executed as if P.L. 98-618, §502(a)(1), struck out "or" at the end of clause (vii).

[40] P.L. 98-618, §502(a)(2), inserted "or" at the end of clause (ix). Executed as if P.L. 98-618, §502(a)(2), inserted "or" at the end of clause (viii).

[41] As in original. No clause (ix).

[42] P.L. 98-618, §502(a)(3), added clause (x).

senior professors, professors, associate and assistant professors, and instructors at the Naval Postgraduate School whose pay is fixed under section 7044 of title 10; and the Academic Dean of the Postgraduate School of the Naval Academy whose pay is fixed under section 7043 of title 10;

(11) aliens or noncitizens of the United States who occupy positions outside the United States;

(12) any Executive agency to the extent of any election under section 1212(b)(2) (relating to the Panama Canal Employment System) of the Panama Canal Act of 1979;

(13) employees who serve without pay or at nominal rates of pay;

(14) employees whose pay is not wholly from appropriated funds of the United States (other than employees of the Federal Retirement Thrift Investment Management System appointed under section 8474(c)(2) of this title)[43], except that with respect to the Veterans' Canteen Service, Veterans' Administration this paragraph applies only to employees necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots whose employment is authorized by section 4202 of title 38;

(15) employees whose pay is fixed under a cooperative agreement between the United States and—

(A) a State or territory or possession of the United States, or political subdivision thereof; or

(B) an individual or organization outside the service of the Government of the United States;

(16) student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, student occupational therapists, and other student employees, assigned or attached to a hospital, clinic, or laboratory primarily for training purposes, whose pay is fixed under subchapter V of chapter 53 of this title or section 4114 of title 38;

(17) inmates, patients, or beneficiaries receiving care or treatment or living in Government agencies or institutions;

(18) experts or consultants, when employed temporarily or intermittently in accordance with section 3109 of this title;

(19) emergency or seasonal employees whose employment is of uncertain or purely temporary duration, or who are employed for brief periods at intervals;

(20) employees employed on a fee, contract, or piece work basis;

(21) employees who may lawfully perform their duties concurrently with their private profession, business, or other employment, and whose duties require only a portion of their time, when it is impracticable to ascertain or anticipate the proportion of time devoted to the service of the Government of the United States;

(22) "teachers" and "teaching positions" as defined by section 901 of title 20;

(23) examiners-in-chief and designated examiners-in-chief in the Patent and Trademark Office, Department of Commerce;

(24) temporary positions in the Bureau of the Census established under section 23 of title 13, and enumerator positions in the Bureau of the Census;

(25) positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the maximum rate for GS-18;

(26) civilian members of the faculty of the Coast Guard Academy whose pay is fixed under section 186 of title 14;[44]

(27) members of the special police force of the Library of Congress whose pay is fixed under section 167 of title 2; or[45]

(28) civilian members of the faculty of the Air Force Institute of Technology whose pay is fixed under section 9314 of title 10.[46]

(d) This chapter does not apply to an employee of the Office of the Architect of the Capitol whose pay is fixed by other statute. Subsection (c) of this section, except paragraph (7), does not apply to the Office of the Architect of the Capitol.

§5103. Determination of applicability

The Office of Personnel Management shall determine finally the applicability of section 5102 of this title to specific positions and employees, except for positions and employees in the Office of the Architect of the Capitol.

---

[43] P.L. 99-335, §207(n), inserted "(other than employees of the Federal Retirement Thrift Investment Management System appointed under section 8474(c)(2) of this title)".

[44] P.L. 99-145, §504(b)(1), struck out "or".

[45] P.L. 99-145, §504(b)(2), struck out the period and substituted "; or".

[46] P.L. 99-145, §504(b)(3), added paragraph (28).

§5104. Basis for grading positions

The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this chapter applies. The General Schedule is divided into 18 grades of difficulty and responsibility of work, as follows:

(1) Grade GS-1 includes those classes of positions the duties of which are to perform, under immediate supervision, with little or no latitude for the exercise of independent judgment—

(A) the simplest routine work in office, business, or fiscal operations; or

(B) elementary work of a subordinate technical character in a professional, scientific, or technical field.

(2) Grade GS-2 includes those classes of positions the duties of which are—

(A) to perform, under immediate supervision, with limited latitude for the exercise of independent judgment, routine work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring some training or experience; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(3) Grade GS-3 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, somewhat difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring in either case—

(i) some training or experience;

(ii) working knowledge of a special subject matter; or

(iii) to some extent the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(4) Grade GS-4 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, moderately difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) a moderate amount of training and minor supervisory or other experience;

(ii) good working knowledge of a special subject matter or a limited field of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(5) Grade GS-5 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special subject matter or of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in a limited field;

(B) to perform, under immediate supervision, and with little opportunity for the exercise of independent judgment, simple and elementary work requiring professional, scientific, or technical training; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(6) Grade GS-6 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(7) Grade GS-7 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, work of considerable difficulty and responsibility along special technical or supervisory lines in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive working knowledge of a special and complex subject matter; procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment;

(B) under immediate or general supervision, to perform somewhat difficult work requiring—

(i) professional, scientific, or technical training; and

(ii) to a limited extent, the exercise of independent technical judgment; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(8) Grade GS-8 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical or supervisory lines in office, business, or fiscal administration, requiring—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive and thorough working knowledge of a specialized and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(9) Grade GS-9 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized training and considerable specialized, supervisory, or administrative experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a special and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment;

(B) with considerable latitude for the exercise of independent judgment, to perform moderately difficult and responsible work, requiring—

(i) professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing; and

(ii) considerable additional professional, scientific, or technical training or experience which has demonstrated capacity for sound independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(10) Grade GS-10 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, highly difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized, supervisory, or administrative training and experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a specialized and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(11) Grade GS-11 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision and with wide latitude for the exercise of independent judgment, work of marked difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated important attainments and marked capacity for sound independent action or decision; and

(ii) intimate grasp of a specialized and complex subject matter, or of the profession, art, or science involved, or of administrative work of marked difficulty;

(B) with wide latitude for the exercise of independent judgment, to perform responsible work of considerable difficulty requiring somewhat extended professional, scientific, or technical training and experience which has demonstrated important attainments and marked capacity for independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(12) Grade GS-12 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision, with wide latitude for the exercise of independent judgment, work of a very high order of difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and attainments of a high order in specialized or administrative work; and

(ii) intimate grasp of a specialized and complex subject matter or of the profession, art, or science involved;

(B) under general administrative supervision, and with wide latitude for the exercise of independent judgment, to perform professional, scientific, or technical work of marked difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and attainments of a high order in professional, scientific, or technical research, practice, or administration; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(13) Grade GS-13 includes those classes of positions the duties of which are—

(A) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility along special technical, supervisory, or administrative lines, requiring extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and marked attainments;

(B) to serve as assistant head of a major organization involving work of comparable level within a bureau;

(C) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in professional, scientific, or technical research, practice, or administration; or

(D) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(14) Grade GS-14 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with wide latitude for the exercise of independent judgment, work of exceptional difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and unusual attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute major professional, scientific, technical, administrative, fiscal, or other specialized programs, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(15) Grade GS-15 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(16) Grade GS-16 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with unusual latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, and other specialized programs of unusual difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated leadership and exceptional attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(17) Grade GS-17 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is of a high order among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, or other specialized programs of exceptional difficulty, responsibility, and national significance, requiring extended training and experience which demonstrated exceptional leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(18) Grade GS-18 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is exceptional and outstanding among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute frontier or unprecedented professional, scientific, technical, administrative, fiscal, or other specialized programs of outstanding difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated outstanding leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

§5105. Standards for classification of positions

(a) The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information for and cooperate in the preparation of the standards. In the standards, which shall be published in such form as the Office may determine, the Office shall—

(1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements;

(2) establish the official class titles; and

(3) set forth the grades in which the classes have been placed by the Office.

(b) The Office, after consulting the agencies to the extent considered necessary, shall revise, supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time will be covered by current published standards.

(c) The official class titles established under subsection (a)(2) of this section shall be used for personnel, budget, and fiscal purposes. However, this requirement does not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

§5106. Basis for classifying positions

(a) Each position shall be placed in its appropriate class. The basis for determining the appropriate class is the duties and responsibilities of the position and the qualifications required by the duties and responsibilities.

(b) Each class shall be placed in its appropriate grade. The basis for determining the appropriate grade is the level of difficulty, responsibility, and qualification requirements of the work of the class.

(c) Appropriated funds may not be used to pay an employee who places a supervisory position in a class and grade solely on the basis of the size of the organization unit or the number of subordinates supervised. These factors may be given effect only to the extent warranted by the work load of the organization unit and then only in combination with other factors, such as the kind, difficulty, and complexity of work supervised, the degree and scope of responsibility delegated to the supervisor, and the kind, degree, and character of the supervision exercised.

§5107. Classification of positions

Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management or, if no published standards apply directly, consistently with published standards. When facts warrant, an agency may change a position which it has placed in a class or grade under this section from that class or grade to another class or grade. Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.

§5108. Classification of positions at GS-16, 17, and 18

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in—

(i) GS-16, 17, and 18; and

(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in GS-16, 17, and 18 in the Federal Bureau of Investigation.

(b)(1) The number of positions of senior specialists in the Legislative Reference Service, Library of Congress, placed in GS-16, 17, and 18 under the proviso in section 166(b)(1) of title 2 are in addition to the number of positions authorized by subsection (a) of this section.

(2) In addition to the number of positions authorized by subsection (a) of this section and positions referred to in paragraph (1) of this subsection, the Librarian of Congress, subject to the procedures prescribed by this section, may place a total of 44 positions in the Library of Congress in GS-16, 17, and 18.

(c) In addition to the number of positions authorized by subsection (a) of this section—

(1) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 15 positions in GS-16, 17, and 18; and

(2) the Chief Judge of the United States Tax Court, without regard to this chapter (except section 5114), may place a total of 5 positions in GS-16, 17, and 18; and

(3) the heads of executive departments or agencies in which boards of contract appeals are established pursuant to the Contract Disputes Act of 1978, and subject to the standards and procedures prescribed by this chapter, but without regard to subsection (d) of this section, may place additional positions, not to exceed seventy in number, in GS-16, GS-17, and GS-18 for the independent quasi-judicial determination of contract disputes, with the allocation of such positions among such executive departments and agencies determined by the Administrator for Federal Procurement Policy on the basis of relative case load.

§5109. Positions classified by statute

(a) The position held by an employee of the Department of Agriculture while he, under section 450d of title 7, is designated and vested with a delegated regulatory function or part thereof shall be classified in accordance with this chapter, but not lower than GS-14.

(b) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title.

§5110. Review of classification of positions

(a) The Office of Personnel Management, from time to time, shall review such number of positions in each agency as will enable the Office to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards.

(b) When the Office finds under subsection (a) of this section that a position is not placed in its proper class and grade in conformance with published standards or that a position for which there is no published standard is not placed in the class and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate class and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

§5111. Revocation and restoration of authority to classify positions

(a) When the Office of Personnel Management finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency by section 5107 of this title and require that prior approval of the Office be secured before an action placing a position in a class and grade becomes effective for payroll and other personnel purposes. The Office may limit the revocation or suspension to—

(1) the departmental or field service, or any part thereof;
(2) a geographic area;
(3) an organization unit or group of organization units;
(4) certain types of classification actions;
(5) classes in particular occupational groups or grades; or
(6) classes for which standards have not been published.

(b) After revocation or suspension, the Office may restore the authority to the extent that it is satisfied that later actions placing positions in classes and grades will be in conformance with or consistent with published standards.

§5112. General authority of the Office of Personnel Management

(a) Notwithstanding section 5107 of this title, the Office of Personnel Management may—

(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;

(2) place in an appropriate class and grade a newly created position or a position coming initially under this chapter;

(3) decide whether a position is in its appropriate class and grade; and

(4) change a position from one class or grade to another class or grade when the facts warrant.

The Office shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(b) An employee affected or an agency may request at any time that the Office exercise the authority granted to it by subsection (a) of this section and the Office shall act on the request.

§5113. Classification records

The Office of Personnel Management may—

(1) prescribe the form in which each agency shall record the duties and responsibilities of positions and the places where these records shall be maintained;

(2) examine these or other pertinent records of the agency; and

(3) interview employees of the agency who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.

[§5114. Repealed.[47]]

§5115. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this chapter, except sections 5109 and 5114.

---

[47] P.L. 99-386, §110(a), repealed §5114.

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

Subchapter II—Executive Schedule Pay Rates

* * * * * * *

§5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
Secretary of the Treasury.
Secretary of Defense.
Attorney General.
Secretary of the Interior.
Secretary of Agriculture.
Secretary of Commerce.
Secretary of Labor.
Secretary of Health and Human Services.
Secretary of Housing and Urban Development.
Secretary of Transportation.
United States Trade Representative.
Secretary of Energy.
Secretary of Education.[48]

§5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Administrator of Veterans' Affairs.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Chairman, Board of Governors of the Federal Reserve System.
Director of the Office of Management and[49] Budget.
Director of the Office of Science and Technology.
Director of the United States Arms Control and Disarmament Agency.
Director of the United States Information Agency.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.
Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Ambassadors at Large.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.[50]
Under Secretary of Defense for Acquisition.[51]
Deputy Secretary of Labor.[52]

§5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

---

[48] P.L.99-198, §1113(d)(sic), added "Special Assistant for Agricultural Trade and Food Aid.".
P.L. 99-260, §4(c), struck out "Special Assistant for Agricultural Trade and Food Aid.".

[49] P.L. 98-216, §3(a)(1), struck out "Bureau of the" and substituted "Office of Management and".

[50] P.L. 98-80, §2(a)(1), added "Administrator of the Environmental Protection Agency.".

[51] P.L. 99-348, §501(d)(1), added "Under Secretary of Defense for Acquisition.".

[52] P.L. 99-619, §2(a)(2), added "Deputy Secretary of Labor.".

Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration,[53] and Under Secretary of Commerce for Travel and Tourism.

Under Secretary of Education.

Under Secretary of Health and Human Services.

Under Secretary of the Interior.[54]

Under Secretary of State for Political Affairs and Under Secretary of State for Economic and Agricultural[55] Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.

Counselor of the Department of State.[56]

Under Secretary of the Treasury (or Counselor).

Under Secretary of the Treasury for Monetary Affairs.

Administrator of General Services.

Administrator of the Small Business Administration.

Deputy Administrator of Veterans' Affairs.

Deputy Administrator, Agency for International Development.[57]

Chairman of the Merit Systems Protection Board.

Chairman, Federal Communications Commission.

Chairman, Board of Directors, Federal Deposit Insurance Corporation.

Chairman of the Federal Home Loan Bank Board.

Chairman, Federal Energy Regulatory Commission.

Chairman, Federal Trade Commission.

Chairman, Interstate Commerce Commission.

Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.

Chairman, Board of Directors of the Tennessee Valley Authority.

Chairman, National Mediation Board.

Chairman, Railroad Retirement Board.

Chairman, Federal Maritime Commission.

Comptroller of the Currency.

Commissioner of Internal Revenue.

Under Secretary of Defense for Policy[58].

Deputy Administrator of the National Aeronautics and Space Administration.

Deputy Director of the Office of Management and[59] Budget.

Deputy Director of Central Intelligence.

Director of the Office of Emergency Planning.

Director of the Peace Corps.

Deputy Director, National Science Foundation.

President of the Export-Import Bank of Washington.

Members, Nuclear Regulatory Commission.

Members, Board of Governors of the Federal Reserve System.

Director of the Federal Bureau of Investigation, Department of Justice.

Administrator of the National Highway Traffic Safety Administration.

Administrator, Federal Railroad Administration.

Chairman, National Transportation Safety Board.

Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.

Chairman of the National Endowment for the Humanities.

Director of the Federal Mediation and Conciliation Service.

Under Secretary of Housing and Urban Development.

Urban Mass Transportation Administrator.

President, Overseas Private Investment Corporation.

Chairman, Postal Rate Commission.

Chairman, Occupational Safety and Health Review Commission.

Governor of the Farm Credit Administration.

Chairman, Equal Employment Opportunity Commission.

Chairman, Consumer Product Safety Commission.

Under Secretary, Department of Energy.

Chairman, Commodity Futures Trading Commission.

Deputy United States Trade Representatives (3).

Chairman, United States International Trade Commission.

---

[53] P.L. 99-64, §116(b), added "Under Secretary of Commerce for Export Administration,".

[54] P.L. 99-619, §2(a)(3), struck out "Under Secretary of Labor.".

[55] P.L. 99-93, §116(b), added "and Agricultural".

[56] P.L. 98-164, §125(b)(1), added "Counselor of the Department of State.".

[57] P.L. 98-443, §9(e), struck out "Chairman, Civil Aeronautics Board.".

[58] P.L. 99-348, §501(d)(2)(A), struck out "Secretaries of Defense (2)" and substituted "Secretary of Defense for Policy".

[59] P.L. 98-216, §3(a)(2), struck out "Bureau of the" and substituted "Office of Management and".

Director of the Office of Drug Abuse Policy.
Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the[60] National Oceanic and Atmospheric Administration.
Associate Attorney General.
Chairman, Federal Mine Safety and Health Review Commission.
Chairman, National Credit Union Administration Board.
Deputy Director of the Office of Personnel Management.
Under Secretary of Agriculture for International Affairs and Commodity Programs.
Director, Institute for Scientific and Technological Cooperation.[61]
Under Secretary of Agriculture for Small Community and Rural Development.
Administrator, Maritime Administration.
Executive Director Property Review Board.
Deputy Administrator of the Environmental Protection Agency.[62]
Archivist of the United States.[63]
Deputy Director of the United States Arms Control and Disarmament Agency.[64]
Executive Director, Federal Retirement Thrift Investment Board.[65] [66]
Deputy Under Secretary of Defense for Acquisition.[67]

§5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.
Associate Administrator of the National Aeronautics and Space Administration.
Assistant Administrators, Agency for International Development (6).
Regional Assistant Administrators, Agency for International Development (4).
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Assistant Secretaries of Agriculture (7).
Assistant Secretaries of Commerce (11)[68].
Assistant Secretaries of Defense (11)[69].
Assistant Secretaries of the Air Force (3).
Assistant Secretaries of the Army (5)[70].
Assistant Secretaries of the Navy (4)[71].
Assistant Secretaries of Health and Human Services (4).
Assistant Secretaries of the Interior (6).
Assistant Attorneys General (10).
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training[72].
Assistant Secretaries of State (15).[73]
Assistant Secretaries of the Treasury (7).[74]
Members, United States International Trade Commission (5).
Assistant Secretaries of Education (6).
General Counsel, Department of Education.
Inspector General, Department of Education.
Director of Civil Defense, Department of the Army.
Deputy Director of the Office of Emergency Planning.
Deputy Director of the Office of Science and Technology.

---

[60] P.L. 99-659, §407(e)(1), struck out "Administrator," and substituted "Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the".

[61] P.L. 98-473, §609J(a), struck out "Director, Office of Justice Assistance, Research, and Statistics.".

[62] P.L. 98-80, §2(b)(1), added "Deputy Administrator of the Environmental Protection Agency."

[63] P.L. 98-497, §107(h), added "Archivist of the United States.".

[64] P.L. 99-93, §704(a)(1), added "Deputy Director of the United States Arms Control and Disarmament Agency.".

[65] P.L. 99-335, §203, added "Executive Director, Federal Retirement Thrift Investment Board.".

[66] P.L. 99-348, §501(d)(2)(B), added "Director of Defense Research and Engineering.".
P.L. 99-591, §903(b)(2)(A), struck out "Director of Defense Research and Engineering.".
P.L. 99-661, §903(b)(2)(A), made the same amendment as P.L. 99-591, §903(b)(2)(A).

[67] P.L. 99-591, §902(b), added "Deputy Under Secretary of Defense for Acquisition".
P.L. 99-661, §902(b), made the same amendment as P.L. 99-591, §902(b).

[68] P.L. 99-64, §116(c), struck out "(8)" and substituted "(11)".

[69] P.L. 98-94, §1212(d)(1), struck out "(7)" and substituted "(11)".

[70] P.L. 98-94, §1212(d)(2), struck out "(4)" and substituted "(5)".

[71] P.L. 98-94, §1212(d)(3), struck out "(3)" and substituted "(4)".

[72] P.L. 99-619, §2(b)(2), struck out "(5)" and substituted "(10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training".

[73] P.L. 99-93, §115(b)(2), struck out "(13)" and substituted "(14)".
P.L. 99-399, §104(c), struck out "(14)" and substituted "(15)".

[74] P.L. 98-594, §1(b), struck out "(5)" and substituted "(7)".

Deputy Director of the Peace Corps.[75]

Deputy Director of the United States Information Agency.

Assistant Directors of the Office of Management and[76] Budget (3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.

General Counsel of the National Labor Relations Board.[77]

Legal Advisor of the Department of State.

General Counsel of the Department of the Treasury.

First Vice President of the Export-Import Bank of Washington.[78] [79]

Members, Council of Economic Advisers.

Members, Board of Directors of the Export-Import Bank of Washington.

Members, Federal Communications Commission.

Member, Board of Directors of the Federal Deposit Insurance Corporation.

Members, Federal Home Loan Bank Board.

Members, Federal Energy Regulatory Commission.

Members, Federal Trade Commission.

Members, Interstate Commerce Commission.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

Members, Board of Directors of the Tennessee Valley Authority.

Members, Merit Systems Protection Board.

Members, Federal Maritime Commission.

Members, National Mediation Board.

Members, Railroad Retirement Board.

Director of Selective Service.

Associate Director of the Federal Bureau of Investigation, Department of Justice.

Members, Equal Employment Opportunity Commission (4).

Chief of Protocol, Department of State.[80]

Director, Community Relations Service.[81]

Members, National Transportation Safety Board.

General Counsel, Department of Transportation.

Deputy Administrator, Federal Aviation Administration.

Assistant Secretaries of Transportation (4).

Deputy Federal Highway Administrator.

Administrator of the St. Lawrence Seaway Development Corporation.

Assistant Secretary for Science, Smithsonian Institution.

Assistant Secretary for History and Art, Smithsonian Institution.

Deputy Administrator of the Small Business Administration.

Assistant Secretaries of Housing and Urban Development (8).

General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.

Federal Insurance Administrator, Federal Emergency Management Agency.

Executive Vice President, Overseas Private Investment Corporation.

Members, National Credit Union Administration Board (2).

Members, Postal Rate Commission (4).

Members, Occupational Safety and Health Review Commission.

Deputy Director of the Office of Drug Abuse Policy.

Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Members, Consumer Product Safety Commission (4).

Commissioner of Social Security, Department of Health and Human Services.

Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.

Administrator for Federal Procurement Policy.

Members, Commodity Futures Trading Commission.

---

[75] P.L. 99-93, §704(a)(2)(A), struck out "Deputy Director of the United States Arms Control and Disarmament Agency.".

[76] P.L. 98-216, §3(a)(3), struck out "Bureau of the" and substituted "Office of Management and".

[77] P.L. 98-164, §125(b)(2), struck out "Counselor of the Department of State.".

[78] P.L. 98-202, §6(b)(1), struck out "Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.".

[79] P.L. 98-443, §9(e), struck out "Members, Civil Aeronautics Board.".

[80] P.L. 99-93, §115(b)(1), struck out "Director, Bureau of Intelligence and Research, Department of State.".

[81] P.L. 98-473, §1701(b), struck out "United States Attorney for the District of Columbia." and "United States Attorney for the Southern District of New York.".

Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

Executive Director for Operations, Nuclear Regulatory Commission.

President, Government National Mortgage Association, Department of Housing and Urban Development.

Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the[82] National Oceanic and Atmospheric Administration.

Commissioner of Immigration and Naturalization, Department of Justice.[83]

Director, Bureau of Prisons, Department of Justice.

Assistant Secretaries of Energy (8).

General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Inspector General, Department of Energy.

Director, Office of Energy Research, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Assistant Secretary for International Narcotics Matters, Department of State.

Inspector General, Department of Health and Human Services.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Veterans' Administration.

Deputy Director, Institute for Scientific and Technological Cooperation.[84]

Chief Counsel for Advocacy, Small Business Administration.

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Inspector General, Department of Defense.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.[85]

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.[86]

Assistant Administrators, Environmental Protection Agency (8).[87]

Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency (2).[88]

Administrator of the Health Care Financing Administration.[89]

Director, National Bureau of Standards, Department of Commerce.[90]

Assistant Directors, United States Arms Control and Disarmament Agency (4).[91]

Inspector General, United States Information Agency.[92]

Inspector General, Department of State.[93]

Director of Defense Research and Engineering.[94]

§5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

---

[82] P.L. 99-659, §407(e)(2)(A), struck out "Deputy Administrator," and substituted "Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the".

[83] P.L. 98-473, §1701(b), struck out "United States Attorney for the Northern District of Illinois." and "United States Attorney for the Central District of California.".

P.L. 99-659, §407(e)(2)(B), struck out "Associate Administrator, National Oceanic and Atmospheric Administration.".

[84] P.L. 98-473, §609J(b), struck out "Administrator of Law Enforcement Assistance.".

[85] P.L. 98-80, §2(c)(1), added "Assistant Administrator for Toxic Substances, Environmental Protection Agency.".

[86] P.L. 98-80, §2(c)(1), added "Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.".

[87] P.L. 98-80, §2(c)(1), added "Assistant Administrators, Environmental Protection Agency (8).".

[88] P.L. 98-202, §6(b)(2), added "Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency (2).".

[89] P.L 98-369, §2332(b), added "Administrator of the Health Care Financing Administration.".

[90] P.L. 99-73, §6(b)(1), added "Director, National Bureau of Standards, Department of Commerce.".

[91] P.L. 99-93, §704(a)(2)(B), added "Assistant Directors, United States Arms Control and Disarmament Agency (4).".

[92] P.L. 99-399, §412(c), added "Inspector General, United States Information Agency.".

[93] P.L. 99-399, §413(a)(5), added "Inspector General, Department of State."

[94] P.L. 99-591, §903(b)(2)(B), added "Director of Defense Research and Engineering.".

P.L. 99-661, §903(b)(2)(B), made the same amendment as P.L. 99-591, §903(b)(2)(B).

Administrator, Agricultural Research Service, Department of Agriculture.

Administrator, Agricultural Stabilization and Conservation Service, Department of Agriculture.

Administrator, Farmers Home Administration.

Administrator, Foreign Agricultural Service, Department of Agriculture.

Administrator, Rural Electrification Administration, Department of Agriculture.

Administrator, Soil Conservation Service, Department of Agriculture.

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Associate Deputy Administrator of Veterans' Affairs.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.[95]

Assistant and Science Advisor to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Chairman of the Military Liaison Committee to the Atomic Energy Commission, Department of Defense.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Chief Forester of the Forest Service, Department of Agriculture.

Additional officers, Department of Education, (4).[96]

Commissioner of Customs, Department of the Treasury.

Commissioner, Federal Supply Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Food and Drugs, Department of Health and Human Services.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner of Patents, Department of Commerce.

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

Director, Advanced Research Projects Agency, Department of Defense.

Director, Bureau of the Census, Department of Commerce.

Director, Bureau of Mines, Department of the Interior.

Director, Geological Survey, Department of the Interior.[97]

Director of Science and Education, Department of Agriculture.

Deputy Commissioner of Internal Revenue, Department of the Treasury.[98]

Deputy Director, Policy and Plans, United States Information Agency.

Deputy General Counsel, Department of Defense.

Associate Director of the Federal Mediation and Conciliation Service.

Associate Director for Volunteers, Peace Corps.

Associate Director for Program Development and Operations, Peace Corps.

Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).

Assistant Directors, Office of Emergency Planning (3).[99]

Fiscal Assistant Secretary of the Treasury.

General Counsel of the Agency for International Development.

General Counsel of the Department of the Air Force.

General Counsel of the Department of the Army.

General Counsel of the Nuclear Regulatory Commission.

General Counsel of the Department of the Navy.

---

[95] P.L. 99-619, §2(c)(2), struck out "Assistant Secretary of Labor for Administration.".

[96] P.L. 99-145, §1204(c), struck out "Administrator of Education for Overseas Dependents, Department of Education.".

[97] P.L. 99-73, §6(b)(2), struck out "Director, National Bureau of Standards, Department of Commerce.".

[98] P.L. 99-383, §7(b)(2), struck out "Assistant Directors, National Science Foundation (4).".

[99] P.L. 99-93, §704(a)(3), struck out "Assistant Directors, United States Arms Control and Disarmament Agency (4).".

General Counsel of the United States Arms Control and Disarmament Agency.
General Counsel of the National Aeronautics and Space Administration.
Administrator of the Panama Canal Commission.
Manpower Administrator, Department of Labor.
Members, Renegotiation Board.
Members, Subversive Activities Control Board.
Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense (4).
Assistant Administrator of General Services.
Director, United States Travel Service, Department of Commerce.
Administrator, Wage and Hour and Public Contracts Division, Department of Labor.
Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.
Associate Director (Policy and Plans), United States Information Agency.
Chief Benefits Director, Veterans' Administration.
Commissioner of Labor Statistics, Department of Labor.
Deputy Director, National Security Agency.
Director, Bureau of Land Management, Department of the Interior.
Director, National Park Service, Department of the Interior.
General Counsel of the Veterans' Administration.
National Export Expansion Coordinator, Department of Commerce.
Special Assistant to the Secretary of Defense.
Staff Director, Commission on Civil Rights.
Assistant Secretary for Administration, Department of Transportation.
Director, United States National Museum, Smithsonian Institution.
Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.
Administrator for Economic Development.
Administrator of the Environmental Science Services Administration.
Associate Directors of the Office of Personnel Management (5).
Assistant Federal Highway Administrator.
Deputy Administrator of the National Highway Traffic Safety Administration.
Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.
Inspector General, Agency for International Development.
Vice Presidents, Overseas Private Investment Corporation (3).
Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation.
General Counsel of the Equal Employment Opportunity Commission.
Director, National Cemetery System, Veterans' Administration.
Executive Director, Advisory Council on Historic Preservation.
Deputy Inspector General, Department of Energy.
Additional Officers, Department of Energy (14).
General Counsel, Commodity Futures Trading Commission.
Administrator, Animal and Plant Health Inspection Service, Department of Agriculture.
Administrator, Federal Grain Inspection Service, Department of Agriculture.
Additional officers, Nuclear Regulatory Commission (5).
Executive Director, Commodity Futures Trading Commission.
Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.
Associate Administrator, Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration.
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.
Assistant Administrators (3), National Oceanic and Atmospheric Administration.
General Counsel, National Oceanic and Atmospheric Administration.
Deputy Inspector General, Department of Health and Human Services.
Inspector General, Department of Commerce.
Members, Federal Labor Relations Authority (2) and its General Counsel.
Inspector General, Department of the Interior.
Director of the Office of Government Ethics.
Inspector General, Community Services Administration.
Inspector General, Environmental Protection Agency.
Inspector General, General Services Administration.
Inspector General, National Aeronautics and Space Administration.
Inspector General, Small Business Administration.

Additional officers, Institute for Scientific and Technological Cooperation (2).[100]
Additional officers, Office of Management and Budget (6).
Associate Deputy Secretary, Department of Transportation.[101]
Chief Scientist, National Oceanic and Atmospheric Administration.[102]

§5317. Presidential authority to place positions at levels IV and V

In addition to the positions listed in sections 5315 and 5316 of this title, the President, from time to time, may place in levels IV and V of the Executive Schedule positions held by not to exceed 34 individuals when he considers that action necessary to reflect changes in organization, management responsibilities, or workload in an Executive agency. Such an action with respect to a position to which appointment is made by the President by and with the advice and consent of the Senate is effective only at the time of a new appointment to the position. Notice of each action taken under this section shall be published in the Federal Register, except when the President determines that the publication would be contrary to the interest of national security. The President may not take action under this section with respect to a position the pay for which is fixed at a specific rate by this subchapter or by statute enacted after August 14, 1964.

* * * * * * *

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

§5331. Definitions; application

(a) For the purpose of this subchapter, "agency", "employee", "position", "class", and "grade" have the meanings given them by section 5102 of this title.

(b) This subchapter applies to employees and positions, other than Senior Executive Service positions, to which chapter 51 of this title applies.

§5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54[103] of this title, is entitled to basic pay in accordance with the General Schedule.

SCHEDULE 1
General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,339	$9,650	$9,961	$10,271	$10,582	$10,764	$11,071	$11,380	$11,393	$11,686
GS-2	10,501	10,750	11,097	11,393	11,521	11,860	12,199	12,538	12,877	13,216
GS-3	11,458	11,840	12,222	12,604	12,986	13,368	13,750	14,132	14,514	14,896
GS-4	12,862	13,291	13,720	14,149	14,578	15,007	15,436	15,865	16,294	16,723
GS-5	14,390	14,870	15,350	15,830	16,310	16,790	17,270	17,750	18,230	18,710
GS-6	16,040	16,575	17,110	17,645	18,180	18,715	19,250	19,785	20,320	20,855
GS-7	17,824	18,418	19,012	19,606	20,200	20,794	21,388	21,982	22,576	23,170
GS-8	19,740	20,398	21,056	21,714	22,372	23,030	23,688	24,346	25,004	25,662
GS-9	21,804	22,531	23,258	23,985	24,712	25,439	26,166	26,893	27,620	28,347
GS-10	24,011	24,811	25,611	26,411	27,211	28,011	28,811	29,611	30,411	31,211
GS-11	26,381	27,260	28,139	29,018	29,897	30,776	31,655	32,534	33,413	34,292
GS-12	31,619	32,673	33,727	34,781	35,835	36,889	37,943	38,997	40,051	41,105
GS-13	37,599	38,852	40,105	41,358	42,611	43,864	45,117	46,370	47,623	48,876
GS-14	44,430	45,911	47,392	48,873	50,354	51,835	53,316	54,797	56,278	57,759
GS-15	52,262	54,004	55,746	57,488	59,230	60,972	62,714	64,456	66,198	67,940
GS-16	61,296	63,339	65,382	67,425	*69,468	*71,511	*73,554	*75,597	*77,640	
GS-17	*71,804	*74,197	*76,590	*78,983	*81,376					
GS-18	*84,157									

*The rate of basic pay payable to employees at these rates is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title.

§5333. Minimum rate for new appointments; higher rates for supervisors of prevailing rate employees

(a) New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position in GS-11 or above at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

---

[100] P.L. 99-619, §2(d), struck out "Assistant Secretary of Labor for Veterans' Employment.".
[101] P.L. 98-557, §26(b), added "Associate Deputy Secretary, Department of Transportation.".
[102] P.L. 99-659, §407(e)(3), added "Chief Scientist, National Oceanic and Atmospheric Administration.".
[103] P.L. 98-615, §204(a)(1), struck out "merit pay system established under section 5402" and substituted "performance management and recognition system established under chapter 54".

(b) Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.

§5334. Rate on change of position or type of appointment; regulations

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

(1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;

(2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;

(3) he is demoted to a position in a lower grade;

(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;

(5) his type of appointment is changed;

(6) his employment status is otherwise changed; or

(7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 106(2) of title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(a)(2) of that title, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred from a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) the maximum rate of the higher grade; or

(2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

(A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

(B) his existing rate of basic pay, if that rate is the higher.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step, or for an employee appointed to a position covered by the performance management and recognition system established under chapter 54[104] of this title, any dollar amount, of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by 20 percent to determine the yearly rate of pay of the position.

---

[104] See footnote 103.

(e) An employee of a county committee established pursuant to section 590h(b) of title 16 may,[105] upon appointment to a position[106] subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.

(f) In the case of an employee covered by the performance management and recognition system established under chapter 54[107] of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent.

§5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

(1) each 52 calendar weeks of service in pay rates 1, 2, and 3;
(2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or
(3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee, except an administrative law judge appointed under section 3105 of this title, is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54[108] of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(f) Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title.[109]

§5336. Additional step-increases

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

(b) A step-increase under this section is in addition to those under section 5335 of this title and is not an equivalent increase in pay within the meaning of section 5335(a) of this title.

(c) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54[110] of this title, or, appointed by the President, by and with the advice and consent of the Senate.

---

[105] P.L. 99-251, §306(b)(1), inserted a comma.
[106] P.L. 99-251, §306(b)(2), struck out "under the Department of Agriculture,".
[107] See footnote 103.
[108] See footnote 103.
[109] P.L. 98-615, §203, added subsection (f).
[110] See footnote 103.

[§5337. Repealed.[111]]

§5338. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

* * * * * * *

Subchapter V—Student-Employees

§5351. Definitions

For the purpose of this subchapter—

* * * * * * *

(2) "student-employee" means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

* * * * * * *

Subchapter VI—Grade and Pay Retention

* * * * * * *

§5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures,

(3) for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54[112] of this title, or

(4) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

---

[111] P.L. 95-454, October 13, 1978; 92 Stat. 1221.

[112] See footnote 103.

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

§5363. Pay retention

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(b) For the purpose of subsection (a) of this section, "allowable former rate of basic pay" means the lower of—

(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(c) The preceding provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

(3) is demoted for personal cause or at the employee's request.

* * * * * * *

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Subchapter I—Travel and Subsistence Expenses; Mileage Allowances

* * * * * * *

§5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

* * * * * * *

Chapter 59—Allowances

* * * * * * *

Subchapter IV—Miscellaneous Allowances

* * * * * * *

§5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $7,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $10,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1987[113], nor shall any agreement cover a period of service extending beyond September 30, 1989[114].

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) chapter 54 of this title, relating to the performance management and recognition system[115];

(D) section 5371 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

(E) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(F) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;

(G) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(H) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or

(I) section 2 of the Act of May 29, 1959 (Public Law 86-36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency; and

(2) "agency" means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of this title, or other benefits related to basic pay.

---

[113] P.L. 98-168, §102(a) struck out "1983" and substituted "1987".

[114] P.L. 98-168, §102(a), struck out "1985" and substituted "1989".

[115] P.L. 98-615, §204(a)(3), struck out "Merit Pay System" and substituted "performance management and recognition system".

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

* * * * * * *

CHAPTER 61—HOURS OF WORK

Subchapter I—General Provisions

* * * * * * *

§6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.
Birthday of Martin Luther King, Jr., the third Monday in January.[116]
Washington's Birthday, the third Monday in February.
Memorial Day, the last Monday in May.
Independence Day, July 4.
Labor Day, the first Monday in September.
Columbus Day, the second Monday in October.
Veterans Day, November 11.
Thanksgiving Day, the fourth Thursday in November.
Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-workday is a legal public holiday for the employee.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

* * * * * * *

CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

§8101. Definitions

For the purpose of this subchapter—

* * * * * * *

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

---

[116] P.L. 98-144, §1, added "Birthday of Martin Luther King, Jr., the third Monday in January.".

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

* * * * * * *

§8112. Maximum and minimum monthly payments

Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.

* * * * * * *

§8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, 50 percent.

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

* * * * * * *

§8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age[117].

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title[118] for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are—

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

---

[117] P.L. 98-94, §1258(a)(1), inserted "under 18 years of age".

[118] P.L. 98-94, §1258(a)(2), struck out "$300" and substituted "the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title".

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) "performance of duty" means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Secretary of Health, Education, and Welfare[119] when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Secretary of Health, Education, and Welfare[120] shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

* * * * * * *

CHAPTER 83—RETIREMENT

* * * * * * *

Subchapter III—Civil Service Retirement

§8331. Definitions

For the purpose of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;[121]

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (other than an employee described in clause (x));[122]

---

[119] As in original. Should be "Health and Human Services".

[120] See footnote 119.

[121] P.L. 99-335, §207(f)(1), amended subparagraph (G) in its entirety.

[122] P.L. 99-335, §202(a)(1), amended clause (ii) in its entirety.

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office of Personnel Management under section 8347(h) of this title;

(v) a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;[123]

(ix) a student-employee as defined by section 5351 of this title;[124]

(x) an employee subject to the Federal Employees' Retirement System; or[125]

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title.[126]

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

(2) "Member" means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System[127];

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title; and

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title; and

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B), (C), and (D) of this paragraph, retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is $10,000;

(4) "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) "Fund" means the Civil Service Retirement and Disability Fund;

[(6) Repealed.]

(7) "Government" means the Government of the United States, the government of the District of Columbia, and Gallaudet College;

(8) "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service including any amounts deposited under section 8334(j) of this title; and

---

[123] P.L. 99-335, §202(a)(2), struck out "or".

[124] P.L. 99-335, §202(a)(3), struck out the period and substituted "; or".
P.L. 99-335, §207(f)(2), struck out "or".

[125] P.L. 99-335, §202(a)(4), added clause (x).
P.L. 99-335, §207(f)(2), struck out the period and substituted "; or".

[126] P.L. 99-335, §207(f)(2), added clause (xi).

[127] P.L. 99-335, §202(b), inserted ", but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System".

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) "annuitant" means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) "survivor" means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) "survivor annuitant" means a survivor who files claim for annuity;

(12) "service" means employment creditable under section 8332 of this title;

(13) "military service" means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(14) "Member service" means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics;

(16) "base month" means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) "normal cost" means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and expressed as a level percentage of aggregate basic pay;

(18) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value; and

(B) the cash balance of the Fund on the books of the Treasury;

(19) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee

engaged in this activity who is transferred to a supervisory or administrative position;[128]

(22) "bankruptcy judge" means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)[129]—

(A) who is serving as a United States bankruptcy judge on March 31, 1984;[130]

(B) whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or[131]

(C) who is appointed as a bankruptcy judge under section 152 of title 28;[132]

(23) "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months; and[133]

(24) "Indian court" means an Indian court as defined by section 201(3) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77).[134]

§8332. Creditable service

* * * * * * *

(j)(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his spouse, former spouse[135] or child is based, if the individual, spouse, former spouse[136], or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse[137] becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare[138], on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse[139], or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or by death or resignation.

(2) The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to—

(A) any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title; or

(B) the service of any employee or Member described in section 8332(c)(1)(B) of this title.

---

[128] P.L. 98-615, §2(1)(A), struck out "and".

[129] P.L. 98-353, §116(a)(1), struck out "adding this paragraph" and substituted "of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)".

[130] P.L. 98-531, §2(a), amended subparagraph (A) in its entirety.

[131] P.L. 98-531, §2(a), amended subparagraph (B) in its entirety.

[132] P.L. 98-353, §116(a)(4), added subparagraph (C).

P.L. 98-615, §2(1)(B), struck out the period and substituted a semicolon.

[133] P.L. 98-615, §2(1)(C), added paragraph (23).

[134] P.L. 98-615, §2(1)(C), added paragraph (24).

[135] P.L. 99-251, §202, struck out "widow" and substituted "spouse, former spouse".

[136] See footnote 135.

[137] See footnote 135.

[138] See footnote 119.

[139] See footnote 135.

(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third[1] sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

* * * * * * *

§8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 year of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this title, with respect to his total service.

* * * * * *

§8334. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7 1/2 percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member and a judge of the United States Court of Military Appeals[2] and a bankruptcy judge[3]. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

* * * * * * *

§8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c)(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) An employee is entitled to an annuity if the employee—

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

---

[1] P.L. 99-335, §207(g)(3), struck out "second" in the last sentence of §8332(k)(1), and substituted "third". Executed as if §207(g)(3) reads "The next to last sentence...".

[2] P.L. 98-94, §1256(a), added "and a judge of the United States Court of Military Appeals".

[3] P.L. 98-353, §116(b), added "and a bankruptcy judge".

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(d) An employee who—

(1) is separated from the service in voluntarily, except by removal for cause on charges of misconduct or delinquency; or

(2) while serving in a geographic area designated by the Office of Personnel Management, is separated from the service voluntarily during a period in which the Office determines that—

(A) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

(B) a significant percent of the employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.[143] Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

* * * * * * *

§8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal.[144] A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a)-(e) or (n).

---

[143] P.L. 98-615, §304(d), inserted this sentence.

* * * * * * *

§8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) A judge of the United States Court of Military Appeals who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.[145]

(d)[146] An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

* * * * * * *

§8341. Survivor annuities

(a) For the purpose of this section—

(1) "widow" means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months[147] immediately before his death; or

(B) is the mother of issue by that marriage;

(2) "widower" means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months[148] immediately before her death; or

(B) is the father of issue by that marriage;

(3) "dependent", in the case of any child, means that the employee or Member involved was, at the time of the employee or Member's death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) "child" means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

* * * * * * *

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i), (n), and (o)[149] of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.[150]

---

[144] P.L. 98-94, §1256(c), inserted this sentence.

[145] P.L. 98-94, §1256(d)(2), inserted this subsection (c).

[146] P.L. 98-94, §1256(d)(1), redesignated the former subsection (c) as subsection (d).

[147] P.L. 98-615, §2(4)(A), struck out "1 year" and substituted "9 months".

[148] See footnote 147.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow[151] or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow[152] or widower—

(A) dies; or

(B) remarries before becoming 55[153] years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.[154]

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)-(f), (i), (n), and (o)[155] of this title as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.[156]

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i)[157] dies; or

(ii)[158] remarries before becoming 55[159] years of age.

---

[149] P.L. 99-272, §15204(a)(2)(A), struck out "and (n)" and substituted ", (n), and (o)".

[150] P.L. 98-615, §2(4)(B)(i), amended paragraph (1) in its entirety.

[151] P.L. 98-615, §2(4)(B)(ii), struck out "spouse, widow," and substituted "widow".

[152] See footnote 151.

[153] P.L. 98-615, §2(4)(B)(iii), struck out "60" and substituted "55".

[154] P.L. 98-615, §2(4)(B)(iv), added paragraph (4).

[155] P.L. 98-353, §112, struck out "(o)" and substituted "(n)".
P.L. 99-272, §15204(a)(2)(B), struck out "and (n)" and substituted "(n), and (o)".

[156] P.L. 98-615, §2(4)(C)(i), inserted this sentence.

[157] P.L. 98-615, §2(4)(C)(ii), redesignated subparagraph (A) as clause (i).

[158] P.L. 98-615, §2(4)(C)(ii), redesignated subparagraph (B) as clause (ii).

[159] P.L. 98-615, §2(4)(C)(ii), struck out "60" and substituted "55".

(e) * * *

(3)[160] The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.[161]

* * * * * * *

§8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an[162] employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title,[163] and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title,[164] at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a of this title, the[165] receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.[166]

* * * * * * *

§8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

---

[160] P.L. 99-251, §205(a)(1), redesignated paragraph (2) as paragraph (3).

[161] P.L. 98-615, §2(4)(D)(ii), amended this sentence in its entirety.

[162] P.L. 98-615, §2(5)(A), struck out "An" and substituted "Subject to subsection (j) of this section, an".

[163] P.L. 99-335, §207(h)(1), inserted ", or chapter 84 of this title,".

[164] See footnote 163.

[165] P.L. 99-335, §204(b)(2), struck out "The" and substituted "Except as provided in section 8343a of this title, the".

[166] P.L. 99-335, §207(h)(2), added this sentence.

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[(f) Repealed.[167]**]**

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(3) As used in this subsection, "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court[168].

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change

---

[167] P.L. 99-251, §305(a), repealed subsection (f).

[168] P.L. 98-615, §2(6)(B), struck out "or the District of Columbia" and substituted ", the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court".

in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, "State" means a State, the District of Columbia, or any territory or possession of the United States.

* * * * * * *

§8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply and the decision of the Board shall be subject to judicial review under section 7703 of this title.

* * * * * * *

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Administrator of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Secretary of Health and Human Services or the Secretary's designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

* * * * * * *

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM[169]

Subchapter I—General Provisions

§8401. Definitions

For the purpose of this chapter—

(1) the term "account" means an account established and maintained under section 8439(a) of this title;

(2) the term "annuitant" means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less that 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) except as provided in subchapter III of this chapter, the term "basic pay" has the meaning given such term by section 8331(3);

(5) the term "Board" means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term "Civil Service Retirement and Disability Fund" or "Fund" means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term "Director" means the Director of the Office of Personnel Management;

(9) the term "dynamic assumptions" means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(10) the term "earnings", when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term "employee" means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), or (J) of section 8331(1) of this title; and

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office;

[170] whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, except that such term does not include—

(i) any individual referred to in—

(I) clause (i), (v), (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph (other than an employee of the United States Park Police, or the United States Secret Service,[171] whose civilian service after December 31, 1983, is such employment); or

(III) the undesignated material after the last clause of such paragraph; or

(ii) any individual excluded under section 8402(c) of this title;

(12) the term "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

(B) if the former spouse was married to such individual for at least 9 months;

(13) the term "Executive Director" means the Executive Director appointed under section 8474(a);

* * * * * * *

(18) the term "loss", as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.[172]

---

[169] P.L. 99-335, §101(a), added this chapter.

[170] P.L. 99-556, §119, struck out "any of".

[171] See footnote 170.

[172] P.L. 99-556, §109, amended paragraph (18) in its entirety.

(19) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);[173]

(C) amounts deposited by an employee, Member, or survivor under section 8411(f); and[174]

(D)[175] interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(20) the term "Member" has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System;

(21) the term "net earnings" means the excess of earnings over losses;

(22) the term "net losses" means the excess of losses over earnings;

(23) the term "normal-cost percentage" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(24) the term "Office" means the Office of Personnel Management;

(25) the term "price index" has the same meaning as provided in section 8331(15);

(26) the term "service" means service which is creditable under section 8411;

(27) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and

(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term "survivor" means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term "System" means the Federal Employees' Retirement System described in section 8402(a);

* * * * * * *

(31) the term "military service" means honorable active service—

(A) in the armed forces;

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States.

§8402. Federal Employees' Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

---

[173] P.L. 99-556, §107(1), struck out "and".
[174] P.L. 99-556, §107(3), added this subparagraph (C).
[175] P.L. 99-556, §107(2), redesignated the former subparagraph (C) as subparagraph (D).

(b) The provisions of this chapter shall not apply with respect to—

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);

except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

* * * * * * *

§8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

SUBCHAPTER II—BASIC ANNUITY

§8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

§8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f),[176] service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); and

---

[176] P.L. 99-556, §103(1), inserted "except as provided in subsection (f),".

(4) a period of service (other than any service under any of the preceding provisions of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

(c)(1) Except as provided in paragraph (2) or (3), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

(B) under chapter 67 of title 10.

(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under subsection (f)(4) shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.[177]

(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

---

[177] P.L. 99-556, §502(b), added paragraph (4).

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or[178] (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

§8412. Immediate retirement

(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement offficer or firefighter, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a air traffic controller, or

(2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

(f) A Member who is separated from the service, except by resignation or expulsion—

(1) after completing 25 years of service, or

(2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

(g)(1)[179] An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.[180]

(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.[181]

(h)(1) The applicable minimum retirement age under this subsection is—

(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

---

[178] P.L. 99-556, §103(2), inserted "(b)(2) or".
[179] P.L. 99-556, §105(a)(1), inserted "(1)".
[180] P.L. 99-556, §105(a)(2), added paragraph (2).
[181] P.L. 99-556, §105(a)(2), added paragraph (3).

(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

§8413. Deferred retirement

(a) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 5 years of service is entitled to an annuity beginning at the age of 62 years.

(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service but before attaining the applicable minimum retirement age under section 8412(h)[182] is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains such minimum retirement age[183] and must precede the date on which the employee or Member becomes 62 years of age.

(2) The election of an annuity under this subsection shall not be effective unless—

(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

§8414. Early retirement

(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

* * * * * * *

§8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

* * * * * * *

(f)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee Member.

---

[182] P.L. 99-556, §105(b)(1)(A), inserted "but before attaining the applicable minimum retirement age under section 8412(h)".

[183] P.L. 99-556, §105(b)(1)(B), struck out "the applicable minimum retirement age under section 8412(h)" and substituted "such minimum retirement age".

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or[184] 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or[185] 8413(b) is to commence.

(g)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

§8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waiver the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

---

[184] P.L. 99-556, §105(b)(2), inserted "8412(g) or".

[185] See footnote 184.

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

§8417. Survivor reduction for a former spouse

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

§8418. Survivor elections; deposit; offsets

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund, before the expiration of the 2-year period involved, an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

§8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable), shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)), shall be reduced by an appropriate percentage determined under subparagraph (B).

(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse; or

(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

(A) another former spouse who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

§8420. Insurable interest reductions

(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Member. Such individual shall be designated by the employee or Member in writing.

(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than

the retiring employee or Member, except that the total reduction may not exceed 40 percent.

(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

§8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which an employee or Member may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

§8421. Annuity supplement

(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h).

(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

(A) an amount determined under paragraph (2), multiplied by

(B) a fraction, as described in paragraph (3).

(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

(i) the average total wages of all workers for that year, multiplied by

(ii) a fraction—

(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

(3) The fraction under this paragraph for any annuitant is a fraction—

(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with 1/2 being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term "benefit computation year" has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term "average total wages of all workers", for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term "service" does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

§8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual's excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the "earnings" and the "applicable exempt amount" of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(c)[186] The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

§8422. Deductions from pay; contributions for military service

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The applicable percentage under this subsection for any pay period shall be—

(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

(i) 7 percent, minus

(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to rate of tax for old-age, survivors, and disability insurance); and

(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

(i) 7 1/2 percent, minus

(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(e)(1) Each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

---

[186] P.L. 99-556, §121, struck out subsection (c) and redesignated subsection (d) as subsection (c).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) January 1, 1987; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

§8423. Government contributions

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

(A) the product of—

(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

(B) the product of—

(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, multipled by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

(2) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, firefighters, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Clerk of the House of Representatives, from the contingent fund of the House.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

§8424. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (b), an employee or Member who—

(1)(A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

(b)(1) Payment of the lump-sum credit under subsection (a)—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

(i) the decree expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies—

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

* * * * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

§8431. Definition

Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term "basic pay", when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (except sections 5308 and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).

§8432. Contributions

(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)(1), an amount not to exceed 10 percent of such individual's basic pay for such period. Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director.

(b)(1)(A) The Executive Director shall prescribe regulations under which employees and Members shall be afforded a reasonable period every 6 months to elect to make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions. An election to make such contributions shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

(2) Under the regulations—

(A) an employee or Member who has not previously been eligible to make an election under this subsection shall not become so eligible until the second period (described in paragraph (1)) beginning after the date of commencing service as an employee or Member;

(B) an employee or Member whose appointment or election to a position or office in the Federal Government follows a previous period of service during which that individual met the requirements of subparagraph (A) shall be eligible to make an election under this subsection notwithstanding any period of separation;

(C) an employee or Member who elects under subparagraph (D) to terminate contributions shall not again become eligible to make an election under this subsection until the second period (described in paragraph (1)) commencing after the election to terminate; and

(D) an election to terminate may be made under this subparagraph at any time other than during a period afforded under paragraph (1).

(3) Notwithstanding paragraph (2)(A), an employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.

(4)(A)[187] Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, continues as an employee or Member without a break in service through April 1, 1987,[188] and has creditable service described in section 8411(b)(2) of this title may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director. The Executive Director shall prescribe an election period for such purpose which shall commence on April[189] 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the date on which the employee or Member makes that election[190].

(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such pay period.[191]

(c)(1)(A)[192] At the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and at the end of each succeeding pay period, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.[193]

(C) If an employee or Member—

(i) is an employee or Member on January 1, 1987;

(ii) separates from Government employment before April 1, 1987; and

(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation.[194]

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made at the end of such pay period.

(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

---

[187] P.L. 99-509, §6001(a)(1)(A), inserted "(A)".

[188] P.L. 99-509, §6001(a)(1)(B), inserted "continues as an employee or Member without a break in service through April 1, 1987,".

[189] P.L. 99-509, §6001(a)(1)(C), struck out "January" and substituted "April".

[190] P.L. 99-509, §6001(a)(1)(D), struck out "last day of that election period" and substituted "date on which the employee or Member makes that election".

[191] P.L. 99-509, §6001(a)(1)(E), added subparagraph (B).

[192] P.L. 99-509, §6001(a)(2)(A)(i), inserted "(A)".

[193] P.L. 99-509, §6001(a)(2)(A)(ii), added subparagraph (B).

[194] P.L. 99-509, §6001(a)(2)(A)(ii), added subparagraph (C).

(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4) and before July 1, 1987, shall be the amount equal to the sum of—

(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.[195]

(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in subparagraph (B) the amount determined under subparagraph (C).

(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

(i) is an employee or Member on January 1, 1987;

(ii) has creditable service described in section 8411(b)(2) of this title; and

(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1954.

(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appropriation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Comptroller General of the United States may, in consultation with the Executive Director, prescribe in regulations.

(g)(1) Except as provided in paragraphs (2) and (3), all contributions made under this section shall be fully nonforfeitable when made.

(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position; or

---

[195] P.L. 99-509, §6001(a)(2)(B), added subparagraph (C).

(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation.

(2) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

§8433. Benefits and election of benefits

(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee's or Member's account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate annuity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—

(1) to receive an immediate annuity from the Thrift Savings Fund;

(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age;

(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age; or

(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(c) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to a deferred annuity under subchapter II of this chapter is entitled and may elect—

(1) to receive an immediate annuity from the Thrift Savings Fund;

(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age;

(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence during any period which (A) commences on or after the date on which payment of the employee's or Member's annuity under subchapter II of this chapter commences, and (B) ends not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age; or

(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(d) Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(e)(1) The Executive Director shall make each transfer elected under subsection (b)(4) or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(f)(1) Subject to paragraph (3)(A) and subsections (a) and (d) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

(2) Subject to paragraph (3)(B) and section 8435(d) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) or (c)(2) may modify the date specified in such election or in a previous modification under this paragraph.

(3)(A) A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity elected by the former employee or Member commences.

(B) A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.

(g) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(d)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

(h) Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

(1) the employee, Member, former employee, or former Member becomes 65 years of age;

(2) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

(3) the employee, Member, former employee, or former Member separates from Government employment.

(i)(1) At any time after December 31, 1987, and before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

(2) An application under this subsection may be approved only for—

(A) the purchase of a primary residence;
(B) educational expenses;
(C) medical expenses; or
(D) financial hardship.

(3) Loans under this subsection shall be subject to such conditions as the Board may prescribe consistent with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)). The conditions shall be included in regulations issued by the Executive Director.

(4) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1954.

(5) A loan may not be made under this subsection unless the requirements of section 8435(f) of this title are satisfied.

§8434. Annuities: methods of payments; election; purchase

(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

(C) a method described in subparagraph (A) which provides annual increases in the amount of the annuity payable;

(D) a method described in subparagraph (B) which provides annual increases in the amount of the annuity payable; and

(E) a method which provides for the payment of a monthly annuity—

(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse of the annuitant, or (II) has an insurable interest in the annuitant; and

(ii) to the one of them who survives the other of them for the life of the survivor.

(b) Subject to section 8435(c) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which the annuity commences, one of the methods of payment prescribed under subsection (a).

(c) Notwithstanding an elimination of a method of payment by the Board—

(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.

(d)(1) At the time an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof of financial responsibility sufficient to protect the annuitant.

§8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) may make an election under subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2) of such section only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (c).

(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

(A) the the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former employee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.

(c)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse a survivor annuity most closely approximating the annuity of a surviving spouse under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married on the date on which the employee's, Member's, former employee's, or former Member's annuity commences under this subchapter.

(2) Paragraph (1) shall not apply—

(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title if—

(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

(i) having provided notification to the spouse of intent to waive; or

(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.

(d)(1) An election, change of election, or modification of the commencement date of a deferred annuity shall not be effective under this subchapter and a transfer may not be made under section 8433(d) of this title to the extent that the election, change, modification, or transfer conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Member (or former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which the annuity commences,

in accordance with the election, change, modification, or contribution referred to in paragraph (1).

(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

(e)(1) Subject to paragraphs (2) through (7), a former spouse of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

(A) an election under section 8434(a)(2)(E) of this title, or

(B) any court decree, order, or agreement (described in subsection (d)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse of a deceased employee, Member, former employee, or former Member under this section may not exceed the excess, if any, of—

(A) the amount of the survivor annuity determined for a surviving spouse of the deceased employee, Member, former employee, or former Member under the method described in subsection (c)(1), over

(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

(4) If more than one former spouse of a deceased employee, Member, former employee, or former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse to a survivor annuity under this subsection.

(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (c)(2).

(7) Any payment under this subsection to any individual bars recovery by any other individual.

(f)(1)(A) A loan may be made to a married employee or Member under section 8433(i) of this title only if the employee's or Member's spouse consents to such loan in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan and in accordance with regulations prescribed by the Executive Director)—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) An application for a loan under section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1).

(g) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

§8436. Administrative provisions

(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

§8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(i) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund attributable to sums contributed to such Fund under section 8432(c) of this title.

(e)(1) Subject to paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659).

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

§8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) the term "Common Stock Index Investment Fund" means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term "equity capital" means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term "Fixed Income Investment Fund" means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term "Government Securities Investment Fund" means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(6) the term "plan" means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(7) the term "qualified professional asset manager" means—

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, which—

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of $1,000,000;

(C) an insurance company which—

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000; and

(8) the term "shareholder's or partner's equity", as used in paragraph (7)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (7)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section.

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (f);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; and

(C) a Common Stock Index Investment Fund as provided in paragraph (2).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(c)(1) Subject to subsection (e), the Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account and not subject to subsection (e) are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1)(A) During each year specified under column 1 of table I set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column 1 of table I is the percentage which corresponds to such year under column 2 of table I.

(C) The amount to the invested as provided in subparagraph (A) in any year specified under column 1 of table I is the total amount contributed to the Thrift Savings Fund by an employee, Member, former employee, or former Member under section 8432(a) of this title and available for investment during such year.

(D) Table I is as follows:

TABLE I

Column 1 Year:	Column 2 Minimum percentage:
1987	100
1988	80
1989	60
1990	40
1991	20.

(2)(A) During each year specified under column 1 of table II set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column 1 of table II is the percentage which corresponds to such year under column 2 of table II.

(C) The amount to be invested as provided in subparagraph (A) in any year specified under column 1 of table II is the total amount contributed to the Thrift Savings Fund for the benefit of an employee, Member, former employee, or former Member under section 8432(c) of this title and available for investment during such year.

(D) Table II is as follows:

TABLE II

Column 1 Year:	Column 2 Minimum percentage:
1987-1992	100
1993	80
1994	60
1995	40
1996	20.

(3)(A) Before 1992, the sums invested in the Government Securities Investment Fund as required by paragraph (1) and the earnings attributable to the investment of such sums may not be reinvested in any investment fund other than the Government Securities Investment Fund.

(B) Before 1997, the sums invested in the Government Securities Investment Fund as required by paragraph (2) and the earnings attributable to the investment of such sums may not be reinvested in any investment fund other than the Government Securities Investment Fund.

(f)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(g) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

§8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual for whom contributions are made under section 8432(c)(1) of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.

(2) The balance in an individual's account at any time is the excess of—

(A) the sum of—

(i) all contributions made to such Fund for the benefit of the individual made to the Thrift Savings Fund by the individual under section 8432(a) or 8351 of this title;

(ii) all contributions made to such Fund for the benefit of the individual under section 8432(c) of this title; and

(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

(b)(1) For the purposes of this subsection, the term "qualified public accountant" shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board and the Comptroller General of the United States a report on his examination, including his determination under this paragraph.

(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

(A) a periodic statement relating to the individual's account; and

(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title.

(d) Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3), respectively, of section 8438(a) of this title shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in either such Fund is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

§8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1954—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code.

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to the provisions of subsection (b) and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b)(1) Subsection (a)(3) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) of the Internal Revenue Code of 1954 and to matching contributions.

(2)(A) This subchapter shall not be treated as failing to meet the requirements of paragraph (1) for any year if the amount of the excess matching contributions and excess employee contributions for such year (and any income attributable to such contributions) is distributed before the close of the following year. Such contributions (and income) may be distributed without regard to any other provision of law.

(B) For purposes of subparagraph (A), the term "excess matching contributions" means, with respect to any year, the excess of—

(i) the aggregate amount of contributions under section 8432(c) of this title actually made on behalf of highly compensated employees (as defined for purposes of section 401(k) of the Internal Revenue Code of 1954) for such year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (1) (determined by reducing contributions made on behalf of highly compensated employees in order of the matching contribution percentages beginning with the highest of such percentages).

(C) For purposes of subparagraph (A), the amount of excess employee contributions shall be determined under the principles of subparagraph (B).

(D) Any distribution of the excess matching contributions or excess employee contributions for any year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees.

(E) No early distribution tax, if any, under the Internal Revenue Code of 1954 shall be imposed on any amount required to be distributed under subparagraph (A).

(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

SUBCHAPTER IV—SURVIVOR ANNUITIES

§8441. Definitions

For the purpose of this subchapter—

(1) the term "widow" means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) the term "widower" means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) the term "dependent", in the case of any child, means that the employee, Member, or annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

(4) the term "child" means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

§8442. Rights of a widow or widower

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, unless—

(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

(A) an amount equal to the sum of—

(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

(ii) $15,000 as adjusted under section 8462(e); and

(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

(A) in a lump sum; or

(B) on a monthly basis—

(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

(A) an annuity under paragraph (2); or

(B) the lump-sum credit, if the widow or widower is the individual who would be entitled to the lump-sum credit and if such widow or widower files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or[196]

---

[196] P.L. 99-556, §120, amended subclause (I) in its entirety.

(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Fund.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) the death of the individual was accidental; or

(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

(2) A supplementary annuity under this subection shall be equal to the lesser of—

(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

(B) the amount determined under paragraph (3).

(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

(i) as of the date on which the annuitant died; and

(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

(4) A supplementary annuity under this subsection—

(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202(e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(5) For the purpose of this subsection, the term "assumed CSRS annuity", as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

(A) as of the day after the date of the annuitant's death;

(B) as if the survivor had made appropriate application therefor; and

(C) as if the service of the deceased annuitant were creditable under such subchapter.

(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a "disability annuitant") is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2), rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant's death.

(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

§8443. Rights of a child

(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

(B) the number of children entitled to a payment under this section for such month.

(2) The applicable amount under this paragraph for any month is the total amount to which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under subchapter III of chapter 83 (including any adjustment based on section 8340)[197] based on the service of such annuitant, employee, or Member, if the service of such annuitant, employee, or Member were creditable under such subchapter.

(3) The applicable amount under this paragraph for any month is the total amount of child's insurance benefits which are payable (or would, on proper application, be payable) under title II of the Social Security Act for such month based on the wages and self-employment income of such annuitant, employee, or Member.

(b) The annuity of a child under this subchapter—

(1) commences on the day after the annuitant, employee, or Member dies;

(2) commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by section 8441(4), if any lump sum paid is returned to the Fund; or

(3) commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum paid is returned to the Fund.

This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

(C) becomes 22 years of age if then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member.

§8444. Rights of a named individual with an insurable interest

The annuity of a survivor named under section 8420(a) is 55 percent of the reduced annuity of the retired employee or Member determined under paragraph (2) of such section 8420(a). The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

§8445. Rights of a former spouse

(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between—

(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

---

[197] P.L. 99-556, §117(a), inserted "(including any adjustment based on section 8340)".

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(1) shall not commence before—

(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

(B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe;

whichever is later; and

(2) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—

(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

(2) to the extent that such modification involves an annuity under this section.

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

SUBCHAPTER V—DISABILITY BENEFITS

§8451. Disability retirement

(a)(1)(A) An employee who completes at least 18 months of civilian service creditable under section 8411 and has become disabled shall be retired on the employee's own application or on application by the employee's agency.

(B) For purposes of this subsection, an employee shall be considered disabled only if the employee is found by the Office to be unable, because of disease or injury, to render useful and efficient service in the employee's position.

(2)(A) Notwithstanding paragraph (1), an employee shall not be eligible for disability retirement under this section if the employee has declined a reasonable offer of reassignment to a vacant position in the employee's agency for which the employee is qualified if the position—

(i) is at the same grade (or pay level) as the employee's most recent grade (or pay level) or higher;

(ii) is within the employee's commuting area; and

(iii) is one in which the employee would be able to render useful and efficient service.

(B) An employee who is applying for disability retirement under this subchapter shall be considered for reassignment by the employee's agency to a vacant position described in subparagraph (A) in accordance with such procedures as the Office shall by regulation prescribe.

(C) An employee is entitled to appeal to the Merit Systems Protection Board under section 7701 any determination that the employee is not unable, because of disease or injury, to render useful and efficient service in a position to which the employee has declined reassignment under this section.

(D) For purposes of subparagraph (A), an employee of the United States Postal Service shall not be considered qualified for a position if such position is in a different craft or if reassignment to such position would be inconsistent with the terms of a collective-bargaining agreement covering the employee.

(b) A Member who completes at least 18 months of service as a Member and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application.

(c) An employee or Member retiring under this section is entitled to an annuity computed under section 8452.

§8452. Computation of disability annuity

(a)(1)(A) Except as provided in paragraph (2), or subsection (b), (c), or (d), the annuity of an annuitant under this subchapter—

(i) for the period beginning on the date on which such annuity commences, or is restored (as described in section 8455(b)(2) or (3)), and ending at the end of the twelfth month beginning on or after such date, shall be equal to 60 percent of the annuitant's average pay; and

(ii) after the end of the period referred to in clause (i), shall be equal to 40 percent of the annuitant's average pay.

(B) An annuity computed under this paragraph shall not, for purposes of any adjustment under section 8462 (including any adjustment under subsection (c)(1) of such section), be considered to have commenced until after such annuity ceases to be determined under subparagraph (A)(i).

(2)(A) For any month in which an annuitant is entitled both to an annuity under this subchapter as computed under paragraph (1) and to a disability insurance benefit under section 223 of the Social Security Act, the annuitant's annuity for such month (as so computed) shall—

(i) if such month occurs during a period referred to in paragraph (1)(A)(i), be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month; or

(ii) if such month occurs other than during a period referred to in paragraph (1)(A)(i), be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month;

except that an annuity may not be reduced below zero by reason of this paragraph.

(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

(I) the amount of the disability insurance benefit to which the annuitant would have been entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commenced, or was restored, determined as if such annuitant had then satisfied all requirements for entitlement to a benefit under such section, adjusted by

(II) all adjustments made under section 8462(b) between the date on which the annuity commenced, or was restored, and the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

For purposes of computing the assumed disability insurance benefit, the month in which the annuitant's disability began (as determined under section 216(i)(2)(C) of the Social Security Act) shall be the month in which the annuity commenced or, if earlier (and if a determination was actually made) the month determined under such section.

(ii) For purposes of applying section 224 of the Social Security Act to the assumed disability insurance benefit used to compute the reduction under this paragraph, the amount of the annuity under this subchapter which is considered shall be the amount of the annuity as determined before the application of this paragraph.

(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's "redetermination date"), such annuity shall be redetermined under paragraph (3) or (4), as applicable. Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

(2)(A) In order to carry out paragraphs (3) and (4), the Office shall compute an annuity for the annuitant under section 8415.

(B) In performing a computation under this paragraph—

(i) creditable service of the annuitant shall be increased by including the period (or periods), if any, before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

(3) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

(A) the amount determined with respect to such annuitant under paragraph (2); or

(B) subject to the following sentence, the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the month in which occurs the day before the annuitant's redetermination date, as computed under subsection (a) (based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a disability insurance benefit under section 223 of the Social Security Act, for the entirety of such month).

If the annuitant's redetermination date occurs during the period described in subsection (a)(1)(A), the amount used under subparagraph (B) may not exceed the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the first month after such period, as computed under subsection (a) based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a disability insurance benefit under section 223 of the Social Security Act, for the entirety of such month.

(4) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is not subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

(A) the amount determined with respect to such annuitant under paragraph (2); or

(B) the amount which would be used for such annuitant under subparagraph (B) of paragraph (3) (as determined subject to the second sentence of such paragraph), if such paragraph applied to such annuitant.

(c) Except as provided in subsection (d), the annuity of an annuitant under this subchapter shall be computed under section 8415 if—

(1) such annuity commences, or is restored, beginning on or after the redetermination date of the annuitant; or

(2) as of the day on which such annuity commences, or is restored, the annuitant satisfies the age and service requirements for entitlement to an annuity under section 8412 (other than subsection (g) of such section).

(d) The annuity to which an annuitant is entitled under this section shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (f) of such section).

§8453. Application

A claim may be allowed under this subchapter only if application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who, at the date of separation from service or within 1 year thereafter, is mentally incompetent if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

§8454. Medical examination

An annuitant receiving a disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until becoming 60 years of age;

unless the disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

§8455. Recovery; restoration of earning capacity

(a)(1) If an annuitant receiving a disability retirement annuity from the Fund recovers from the disability before becoming 60 years of age, payment of the annuity terminates on reemployment by the Government or 1 year after the date on which the Office determines that the annuitant has recovered, whichever is earlier.

(2) If an annuitant receiving a disability annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates 180 days after the end of the calendar year in which earning capacity is so restored. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(b)(1) If an annuitant whose annuity is terminated under subsection (a) is not reemployed in a position in which that individual is subject to this chapter, such individual is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of subchapter II of this chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of such subchapter.

(2) If an annuitant whose annuity is terminated under subsection (a)(2)—

(A) is not reemployed in a position subject to this chapter; and

(B) has not recovered from the disability for which that individual was retired;

the annuity of such individual shall be restored at the applicable rate under section 8452 effective the first of the year following any calendar year in which such individual's income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement.

(3) If an annuitant whose annuity is terminated because of a medical finding that the individual has recovered from disability is not reemployed in a position in which such individual is subject to this chapter, the annuity of such individual shall be restored at the applicable rate under section 8452 effective from the date on which the Office determines that there has been a recurrence of the disability.

(4) Paragraphs (2) and (3) shall not apply in the case of an annuitant receiving an annuity from the Fund under subchapter II of this chapter.

§8456. Relationship to workers' compensation

(a)(1) An individual is not entitled to receive an annuity under this subchapter and compensation for injury to or disability of the individual under subchapter I of chapter 81 covering the same period of time.

(2) Paragraph (1) does not bar the right of a claimant to the greater benefit conferred by either subchapter referred to in such paragraph for any part of the period referred to in such paragraph.

(3) Paragraph (1) and the provisions of subchapter I of chapter 81 do not deny an individual an annuity which the individual is entitled to receive under this chapter on account of service performed by the individual and do not deny any concurrent benefit to the individual under subchapter I of chapter 81 on account of the death of another individual.

(b)(1) Subject to paragraph (2), an individual's receipt of a lump-sum payment for compensation under section 8135 shall not affect the individual's entitlement to an annuity under this subchapter.

(2) If an annuity is payable under this subchapter by reason of the same disability for which a lump-sum payment of compensation referred to in paragraph (1) has been made, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the disability annuity, the individual shall—

(A) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(B) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding under this paragraph, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

* * * * * * *

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

§8461. Authority of the Office of Personnel Management

(a) The Office shall pay all benefits that are payable under subchapter II, IV, V, or VI of this chapter from the Fund.

(b) The Office shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, the Secretary of Labor, or any other officer or agency.

(c) The Office shall adjudicate all claims under the provisions of this chapter administered by the Office.

(d) The Office shall determine questions of disability and dependency arising under the provisions of this chapter administered by the Office. Except to the extent provided under subsection (e), the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under the provisions of this chapter administered by the Office. The Office may suspend or deny annuity for failure to submit to examination.

(e)(1) Subject to paragraph (2), an administrative action or order affecting the rights or interests of an individual or of the United States under the provisions of this chapter administered by the Office may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8451, the procedures under section 7701 shall apply and the decision of the Board shall be subject to judicial review under section 7703.

(f) The Office shall fix the fees for examinations made under subchapter V of this chapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering the provisions of this chapter administered by the Office.

(g) The Office may prescribe regulations to carry out the provisions of this chapter administered by the Office.

(h)(1) Each Government agency shall furnish the Director with such information as the Director determines necessary in order to administer this chapter.

(2) The Director, in consultation with the officials from whom such information is requested, shall establish (by regulation or otherwise) such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(i) In making a determination of "actuarial equivalence" under this chapter, the economic assumptions used shall be the same as the economic assumptions most recently used by the Office (before the determination of actuarial equivalence involved) in determining the normal-cost percentage of the System.

(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this chapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

(k)(1) The Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, may—

(A) maintain exclusive records relating to elections, contributions, and accounts under the Thrift Savings Plan provided in subchapter III of this chapter in the case of employees of the Central Intelligence Agency;

(B) provide that contributions by, or on behalf of, such employees to the Thrift Savings Plan be accounted for by such Executive Director in aggregate amounts;

(C) make the necessary disbursements from, and the necessary allocations of earnings, losses, and charges to, individual accounts of such employees under the Thrift Savings Plan; and

(D) perform such other functions under subchapters III and VII of this chapter (but not including investing sums in the Thrift Savings Fund) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, determines to be appropriate.

(2) The Executive Director of the Federal Retirement Thrift Investment Board may not exercise authority under this chapter in the case of employees of the Central Intelligence Agency to the extent that the Director of Central Intelligence exercises authority provided in paragraph (1).

(3) The Executive Director of the Federal Retirement Thrift Investment Board shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence determines necessary to carry out this subsection.

(l) Subsection (h)(1), and sections 8439(b) and 8474(c)(4), shall be applied with respect to information relating to employees of the Central Intelligence Agency in a manner that protects intelligence sources, methods, and activities.

(m)(1) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall by regulation prescribe appropriate procedures to carry out subsections (j), (k), and (l).

(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund[198] under this chapter.

(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

§8462. Cost-of-living adjustments

(a) For the purpose of this section—

(1) the term "base quarter", as used with respect to a year, means the calendar quarter ending on September 30 of such year;

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter; and

(3) the term "percent change in the price index", as used with respect to a year, means the percentage derived by—

(A) reducing—

(i) the price index for the base quarter of such year, by

(ii) the price index for the base quarter of the preceding year in which an adjustment under this subsection was made;

(B) dividing the difference under subparagraph (A) by the price index referred to in subparagraph (A)(ii); and

(C) multiplying the quotient under subparagraph (B) by 100.

(b)(1) Except as provided in subsection (c), effective December 1 of any year in which an adjustment under this subsection is to be made, as determined under paragraph (2), each annuity payable from the Fund under this chapter (other than an annuity under section 8443) having a commencing date not later than such December 1 shall be adjusted as follows:

(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity subject to adjustment under this subsection shall be increased by the lesser of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent); or

(ii) 2 percent.

(B) If the percent change in the price index for the year exceeds 3 percent, each annuity subject to adjustment under this subsection shall be increased by the excess of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent), over

(ii) 1 percent.

(2) An adjustment under this subsection shall be made in a year only if the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year in which an adjustment under this subsection was made.

(3) An annuity under this chapter shall not be subject to adjustment under section 8340. Nothing in the preceding sentence shall affect the computation of any amount under section 8443(a)(2).[199]

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to an annuitant or survivor (other than a child under section 8443) whose annuity has not been increased under this subsection or subsection (b) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase; or

(ii) in the case of a survivor of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

---

[198] P.L. 99-556, §102, struck out ", and from the Thrift Savings Fund,".

[199] P.L. 99-556, §117(b), added this sentence.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443) shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

(3)(A) An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

(B)(i) Except as provided in clause (ii), this paragraph applies only with respect to an annuitant under section 8412, 8413, or 8414.

(ii) This paragraph does not apply with respect to an annuitant under subsection (d) or (e) of section 8412 or (in the case of an annuitant separated from service as a military reserve technician as a result of disability) under section 8414(c).

(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's annuity is based; or

(ii) if the annuity of the annuitant (referred to in clause (i)) has not been increased under this section, the commencement date of such annuitant's annuity (determined subject to section 8452(a)(1)(B)).

(d) The monthly installment of an annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall, after adjustment, reflect an increase of at least $1.

(e) The $15,000 amount referred to in section 8442(b)(1)(A)(ii) shall be increased at the same time that, and by the same percent as the percentage by which, annuities under subchapter III of chapter 83 are increased.

§8463. Rate of benefits

Each annuity payable from the Fund is stated as an annual amount, one-twelfth of which, rounded to the next lower dollar, constitutes the monthly rate payable on the first business day of the first month beginning after the month for which it has accrued.

§8464. Commencement and termination of annuities of employees and Members

(a)(1) Except as otherwise provided in this chapter—

(A) an annuity payable from the Fund commences on the first day of the month after—

(i) separation from the service, in the case of an employee or Member retiring under section 8412, or subsection (a) or (b)(1)(B) of section 8414; or

(ii) pay ceases, and the applicable age and service requirements are met, in the case of an employee or Member retiring under section 8413;

(B) an annuity payable from the Fund commences on the day after separation from the service in the case of an employee retiring under subsection (b)(1)(A) or (c) of section 8414; and

(C) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.

(2) Notwithstanding paragraph (1)(A)(i), an annuity payable from the Fund commences on the day after separation from the service in the case of an employee or Member—

(A) who retires under section 8412; and

(B) whose separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

(b) Except as otherwise provided in this chapter, the annuity of an annuitant under subchapter II or V of this chapter terminates on the date death or other terminating event occurs.

§8465. Waiver, allotment, and assignment of benefits

(a) An individual entitled to an annuity payable from the Fund may decline to accept all or any part of the amount of the annuity by a waiver signed and filed with the Office. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(b) An individual entitled to an annuity payable from the Fund may make allotments or assignments of amounts from the annuity for such purposes as the Office considers appropriate.

§8466. Application for benefits

(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

§8467. Court orders

(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.

(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

§8468. Annuities and pay on reemployment

(a) If an annuitant becomes employed in an appointive or elective position in the Government, payment of any annuity under subchapter II or V of this chapter to the annuitant terminates effective on the date of the employment. The annuitant's service on and after the date the annuitant becomes so employed is covered by this chapter unless such service is performed as a justice or judge of the United States (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees. Upon termination of the employment, the rights of the annuitant under subchapter II or V of this chapter (as the case may be) shall be redetermined. If the annuitant dies while still so employed, a survivor annuity payable with respect to the deceased annuitant shall be redetermined as if the employment had otherwise terminated on the date of death.

(b) The amount of an annuity resulting from a redetermination of rights under this chapter pursuant to subsection (a) shall not be less than the amount of the terminated annuity plus any increases which (but for the reemployment) would have been payable under section 8462 after the termination of the annuity and before the commencement of the redetermined annuity.

(c) The redetermined annuity commences on the first day of the month after termination of employment.

§8469. Withholding of State income taxes

(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(e) For the purpose of this section—

(1) the term "State" means a State, the District of Columbia, or any territory or possession of the United States; and

(2) the term "annuitant" includes a survivor who is receiving an annuity from the Fund.

§8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as othewise may be provided by Federal laws.

(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

§8471. Definitions

For the purposes of this subchapter—

(1) the term "beneficiary" means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

(2) the term "Council" means the Employee Thrift Advisory Council established under section 8473 of this title;

(3) the term "participant" means an individual for whom an account has been established under section 8439 of this title;

(4) the term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

(5) the term "Thrift Savings Fund" means the Thrift Savings Fund established under section 8437 of this title.

§8472. Federal Retirement Thrift Investment Board

(a) There is established in the Executive branch of the Government a Federal Retirement Thrift Investment Board.

(b) The Board shall be composed of—

(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

(2) 2 members appointed by the President, of whom—

(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

(c) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, appointments under subsection (a) shall be made by and with the advice and consent of the Senate.

(d) Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(e)(1) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, a member of the Board shall be appointed for a term of 4 years, except that of the members first appointed (other than the members appointed under such section)—

(A) the Chairman shall be appointed for a term of 4 years;

(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

(C) the remaining members shall be appointed for terms of 2 years.

(2)(A) A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) The term of any member shall not expire before the date on which the member's successor takes office.

(f) The Board shall—

(1) establish policies for—

(A) the investment and management of the Thrift Savings Fund; and

(B) the administration of subchapter III of this chapter;

(2) review the performance of investments made for the Thrift Savings Fund; and

(3) review and approve the budget of the Board.

(g)(1) The Board may—

(A) adopt, alter, and use a seal;

(B) except as provided in paragraph (2), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(C) upon the concurring votes of four members, remove the Executive Director from office for good cause shown; and

(D) take such other actions as may be necessary to carry out the functions of the Board.

(2) Except in the case of investments required by section 8438 of this title to be invested in securities of the Government, the Board may not direct the Executive Director to invest or to cause to be invested any sums in the Thrift Savings Fund in a specific asset or to dispose of or cause to be disposed of any specific asset of such Fund.

(h) The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this subchapter and subchapter III of this chapter.

(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.[200]

(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law.[201]

§8473. Employee Thrift Advisory Council

(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 14 members appointed by the Chairman of the Board in accordance with subsection (b).

(b) The Chairman shall appoint 14 members of the Council, of whom—

(1) 4 shall be appointed to represent the respective labor organizations representing (as exclusive representatives) the first, second, third, and fourth largest numbers of individuals subject to chapter 71 of this title;

(2) 2 shall be appointed to represent the respective labor organizations which have been accorded exclusive recognition under section 1203(a) of title 39 representing the largest and second largest numbers of individuals employed by the United States Postal Service;

(3) 1 shall be appointed to represent the labor organization which has been accorded exclusive recognition under section 1203(a) of title 39 representing the

---

[200] P.L. 99-509, §6001(e), added subsection (i).

[201] P.L. 99-509, §6001(e), added subsection (j).

largest number of individuals employed by the United States Postal Service as rural letter carriers;

(4) 2 shall be appointed to represent the respective managerial organizations (other than an organization described in paragraph (5)) which consult with the United States Postal Service under section 1004(b) of title 39 and which represent the largest and second largest numbers of individuals employed by the United States Postal Service as managerial personnel;

(5) 1 shall be appointed to represent the supervisors' organization as defined in section 1004(h) of title 39;

(6) 1 shall be appointed to represent employee organizations having as a purpose promoting the interests of women in Government service;

(7) 1 shall be appointed to represent the organization representing the largest number of individuals receiving annuities under this chapter or chapter 83 of this title;

(8) 1 shall be appointed to represent the organization representing the largest number of individuals subject to the Performance Management and Recognition System under chapter 54 of this title; and

(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service.

(c)(1) The Chairman of the Board shall designate 1 member of the Council to serve as head of the Council.

(2) A member of the Council shall be appointed for a term of 4 years.

(3)(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) The term of any member shall not expire before the date on which the member's successor takes office.

(d) The Council shall act by resolution of a majority of the members.

(e) The Council shall—

(1) advise the Board and the Executive Director on matters relating to—

(A) investment policies for the Thrift Savings Fund; and

(B) the administration of this subchapter and subchapter III of this chapter; and

(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III of this chapter.

(f) Section 14(a)(2) of the Federal Advisory Committee Act shall not apply to the Council.

§8474. Executive Director

(a)(1) The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

(2) The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(b) The Executive Director shall—

(1) carry out the policies established by the Board;

(2) invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board;

(3) purchase annuity contracts and provide for the payment of other benefits under subchapter III of this chapter;

(4) administer the provisions of this subchapter and subchapter III of this chapter;

(5) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter and subchapter III of this chapter; and

(6) meet from time to time with the Council upon request of the Council.

(c) The Executive Director may—

(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter;

(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

(4) secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the

provisions of this subchapter or subchapter III of this chapter and policies of the Board;

(5) make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(6) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2), (3), and (7) of this subsection from the Thrift Savings Fund;

(7) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of this title, including per diem as authorized by section 5702 of this title;

(8) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

(9) take such other actions as are appropriate to carry out the functions of the Executive Director.

§8475. Investment policies

The Board shall develop investment policies under section 8472(f)(1) of this title which provide for—

(1) prudent investments suitable for accumulating funds for payment of retirement income; and

(2) low administrative costs.

§8476. Administrative provisions

(a) The Board shall meet—

(1) not less than once during each month; and

(2) at additional times at the call of the Chairman.

(b)(1) Except as provided in sections 8472(g)(1)(C) and 8474(a)(1) of this title, the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board.

(2) A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

(c) Three members of the Board shall constitute a quorum for the transaction of business.

(d)(1) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for grade GS-18 of the General Schedule for each day during which such member is engaged in performing a function of the Board.

(2) A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of this title while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

(3) Payments authorized under this subsection shall be paid from the Thrift Savings Fund.

(e) The accrued annual leave of any employee who is a member of the Board or the Council shall not be charged for any time used in performing services for the Board or the Council.

§8477. Fiduciary responsibilities; liabilities and penalties

(a) For the purposes of this section—

(1) the term "account" is not limited by the definition provided in section 8401(1);

(2) the term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

(3) the term "fiduciary" means—

(A) a member of the Board;

(B) the Executive Director;

(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and

(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and

(4) the term "party in interest" includes—

(A) any fiduciary;

(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

(C) any participant;

(D) any person providing services to the Board and, with respect to the actions of the Executive Director as a fiduciary any person providing services to the Executive Director;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of—

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

(c)(1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not—

(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

(3)(A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.

(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is—

(i) administratively feasible;

(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and

(iii) protective of the rights of participants and beneficiaries of such Fund.

(D) An exemption under this paragraph may not be granted unless—

(i) notice of the proposed exemption is published in the Federal Register;

(ii) interested persons are given an opportunity to present views; and

(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).[202]

(d) This section does not prohibit any fiduciary from—

(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;

(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(e)(1)(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate. A fiduciary may be removed for a breach referred to in the preceding sentence.

(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

(C) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary if—

(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

---

[202] P.L. 99-556, §112, added subparagraph (E).

(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986)[203], or in continuing such allocation; or

(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

(2) A civil action may be brought in the district courts of the United States—

(A) by the Secretary of Labor—

(i) to determine and enforce a liability under paragraph (1)(A);

(ii) to collect any civil penalty under paragraph (1)(B); or

(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

(B) by the Secretary of Labor, any participant, beneficiary, or fiduciary—

(i) to enjoin any act or practice which violates any provision of subsection (b) or (c); or

(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

(C) by any participant or beneficiary to recover benefits due to him or her under the provisions of subchapter III of this chapter, to enforce his or her rights under such provisions, or to clarify his or her rights to future benefits under such provisions.

(3) An action may not be commenced under paragraph (2) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

(4)(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

(5)(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

(f) The Secretary of Labor may prescribe regulations to carry out this section.

(g)(1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

§8478. Bonding

(a)(1) Except as provided in paragraph (2), each fiduciary[204] and each person who handles funds or property of the Thrift Savings Fund shall be bonded as provided in this section.

---

[203] P.L. 99-556, §114(b), struck out "Board" and substituted "Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986)".

[204] P.L. 99-556, §108, struck out "(other than a member of the Employee Thrift Advisory Council with respect to his duties as a member)".

(2)(A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary—

(i) is a corporation organized and doing business under the laws of the United States or of any State;

(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) is subject to supervision or examination by Federal or State authority; and

(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than $1,000,000) as the Secretary of Labor prescribes in regulations.

(B) If—

(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),

(ii) the bank or financial institution is authorized to exercise trust powers, and

(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

(b)(1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) A bond required by subsection (a)—

(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31[205]; and

(3) shall be in a form or of a type approved by the Secretary of Labor, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(d)(1) It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

§8478a. Investigative authority[206]

Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.

---

[205] P.L. 99-556, §115, struck out "6 through 13 of title 6" and substituted "9304 through 9308 of title 31".

[206] P.L. 99-556, §110(a), added §8478a.

§8479. Exculpatory provisions; insurance

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void.

(b)(1) The Executive Director may require employing agencies to contribute an amount not to exceed 1 percent of the amount such agencies are required to contribute in accordance with section 8432(c) of this title to the Thrift Savings Fund.

(2) The sums credited to the Thrift Savings Fund under paragraph (1) shall be available and may be used at the discretion of the Executive Director to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the Thrift Savings Fund, without regard to whether a policy of insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation.

CHAPTER 85—UNEMPLOYMENT COMPENSATION

Subchapter I—Employees Generally

§8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(C) by members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;

(D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

(F) by an individual receiving nominal pay and allowances of $12 or less a year;

(G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(H) by a student-employee as defined by section 5351 of this title;

(I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(J) by an individual employed under a Federal relief program to relieve him from unemployment;

(K) as a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(L) by an officer or a member of the crew on or in connection with an American vessel—

(i) owned by or bareboat chartered to the United States; and

(ii) whose business is conducted by a general agent of the Secretary of Commerce;

if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service;

(3) "Federal employee" means an individual who has performed Federal service;

(4) "compensation" means cash benefits payable to an individual with respect to his unemployment including any portion thereof payable with respect to dependents;

(5) "benefit year" means the benefit year as defined by the applicable State unemployment compensation law, and if not so defined the term means the period prescribed in the agreement under this subchapter with a State or, in the absence of such an agreement, the period prescribed by the Secretary of Labor;

(6) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(7) "United States", when used in a geographical sense, means the States; and

(8) "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

§8502. Compensation under State agreement

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

[(c) Repealed.**]**

(d) A determination by a State agency with respect to entitlement to compensation under an agreement is subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(e) Each agreement shall provide the terms and conditions on which it may be amended or terminated.

§8503. Compensation absent State agreement

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 8504 of this title to a State which does not have an agreement with the Secretary of Labor, the Secretary, under regulations prescribed by him, shall, on the filing by the Federal employee of a claim for compensation under this subsection, pay compensation to him in the same amount, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the State if his Federal service and Federal wages had been included as employment and wages under that State law. However, if the Federal employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of compensation under this subsection may be made only on the basis of his Federal Service and Federal wages.

(b) A Federal employee whose claim for compensation under subsection (a) of this section is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary with respect to entitlement to compensation under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.

§8504. Assignment of Federal service and wages

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

§8505. Payments to States

(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages.

(b) Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, the sum that the Secretary estimates the State is entitled to receive under this subchapter for each calendar month. The sum shall be reduced or increased by the amount which the Secretary finds that his estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Secretary and the State agency.

(c) The Secretary, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of this subchapter.

(d) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the agreement, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

(e) An agreement may—

(1) require each State officer or employee who certifies payments or disburses funds under the agreement, or who otherwise participates in its performance, to give a surety bond to the United States in the amount the Secretary considers necessary; and

(2) provide for payment of the cost of the bond from funds for carrying out the purposes of this subchapter.

(f) In the absence of gross negligence or intent to defraud the United States, an individual designated by the Secretary, or designated under an agreement, as a certifying official is not liable for the payment of compensation certified by him under this subchapter.

(g) In the absence of gross negligence or intent to defraud the United States, a disbursing official is not liable for a payment by him under this subchapter if it was based on a voucher signed by a certifying official designated as provided by subsection (f) of this section.

(h) For the purpose of payments made to a State under subchapter III of chapter 7 of title 42, administration by a State agency under an agreement is deemed a part of the administration of the State unemployment compensation law.

§8506. Dissemination of information

(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this subchapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter. The information shall include the findings of the employing agency concerning—

(1) whether or not the Federal employee has performed Federal service;

(2) the periods of Federal service;

(3) the amount of Federal wages; and

(4) the reasons for termination of Federal service.

The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. This subsection does not apply with respect to Federal service and Federal wages covered by subchapter II of this chapter.

(b) The agency administering the unemployment compensation law of a State shall furnish the Secretary such information as he considers necessary or appropriate in carrying out this subchapter. The information is deemed the report required by the Secretary for the purpose of section 503(a)(6) of title 42.

§8507. False statements and misrepresentations

(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as compensation under this subchapter to which he was not entitled;

the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from compensation payable to the individual under this subchapter during the 2-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 8502(d) and 8503(c) of this title.

(b) An amount repaid under subsection (a) of this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

§8508. Regulations

The Secretary of Labor may prescribe rules and regulations necessary to carry out this subchapter and subchapter II of this chapter. The Secretary, insofar as practicable, shall consult with representatives of the State unemployment compensation agencies before prescribing rules or regulations which may affect the performance by the State agencies of functions under agreements under this subchapter.

§8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the "Account") in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after December 31, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1981) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in paragraph (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

(h) For purposes of this section, the term "Federal service" includes Federal service as defined in section 8521(a).

Subchapter II—Ex-Servicemen

§8521. Definitions; application

(a) For the purpose of this subchapter—

(1) "Federal service" means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service—

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship, or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

(c)(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment.

§8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed as assignment under section 8504 of this title for the purpose of this subchapter.

§8523. Dissemination of information

(a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.

(b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:

(1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to—

(A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;

(B) the periods of Federal service; and

(C) the pay grade of the individual at the time of his latest discharge or release from Federal service.

(2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

[§8524. Repealed.[207]]

---

[207] P.L. 91-373, §107, 84 Stat. 701.

§8525. Effect on other statutes

[(a) Repealed.[208]]

(b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives—

(1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or

(2) an educational assistance allowance under chapter 35 of title 38.

* * * * * * *

CHAPTER 89—HEALTH INSURANCE

* * * * * * *

§8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, or former spouses[209], or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, or former spouse[210].

(2) INDEMNITY BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) EMPLOYEE ORGANIZATION PLANS.—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title[211], which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) COMPREHENSIVE MEDICAL PLANS.—

(A) GROUP-PRACTICE PREPAYMENT PLANS.—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.[212]

(B) INDIVIDUAL-PRACTICE PREPAYMENT PLANS.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) MIXED MODEL PREPAYMENT PLANS.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).[213]

§8903a. Additional health benefits plans[214]

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

---

[208] P.L. 90-83, §1(90); 81 Stat. 219.

[209] P.L. 98-615, §3(3)(A), struck out "employees or annuitants, or members of their families" and substituted "employees, annuitants, members of their families, or former spouses".

[210] P.L. 98-615, §3(3)(B), struck out "employee or annuitant or member of his family" and substituted "employee, annuitant, family member, or former spouse".

[211] P.L. 99-53, §2(b), inserted "described in section 8901(8)(A) of this title".

[212] P.L. 99-251, §102, amended this sentence in its entirety.

[213] P.L. 99-251, §111, added subparagraph (C).

[214] P.L. 99-53, §1(b), added this section.

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

* * * * * * *

§8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

(1) the service benefit plan;

(2) the indemnity benefit plan;

(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and

(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office)[215]

(c) There shall be withheld from the pay of each enrolled employee and the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment

---

[215] As in original. Should have a period.

and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(f) The Government contributions for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Clerk of the House of Representatives, from the contingent fund of the House; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraph (2), the[216] Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after October 1, 1986, shall be paid by the United States Postal Service.[217]

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

* * * * * * *

[*Internal References.*—Social Security Act §§706(b), 1114(b) and (f), 1125(b), 1153(d)(3), 1845(a)(1), 1878(h), and 1886(e)(2) and (e)(6)(C)(i) cite Title 5; §1869(b)(3)(B) cites chapter 5 of title 5; §§205(r)(6), 1106(c), and 1160(a) cite §552; §§202(x)(3), 205(r)(6) and 1106(c) cite §552a; §221(k)(2) cites §553; §1871(b)(2)(C) cites §553(b) and (b)(B); §221(j)(end) cites §553(b)(A); §§1816(e)(3)(A) and (e)(3)(B) and 1878(f)(1) cite chapter 7 of title 5; §210(a)(5)(B)(i)(II) cites chapter 33, subchapter III, §3343 and chapter 35; §1125(b) cites chapter 51 and subchapters III and VI of chapter 53; §210(a)(5)(D)(i) cites §§5312 through 5317; §1886(e)(6)(D) cites §§5315, 5948 and 5948(i); §§1122(i)(3), 1153(d)(3) and 1878(h) cite §5332; §§210(a)(6)(B), (a)(7)(D)(ii) and (p)(2)(D) cite §5351(2); §§706(c)(2), 908(d), 1114(g), 1122(i)(3), and 1882(b)(2)(E) cite §5703; §708(a) cites §6103; §226(g)(3) cites chapter 83; §210(a)(5)(G)(i), (a)(5)(G)(iii) and (a)(5)(G)(end), 215(h)(1), 217(f)(1) and (f)(2), and 1840(d)(1) cite chapter 83, subchapter III; §210(a)(5)(G)(end)(a) cites §§8332(k)(1) and 8834(a); §210(a)(5)(G)(ii) cites §8342(a); §210(a)(5)(H) cites chapter 84 of title 5; §909 cites §8509; and §1840(d)(1) cites §8903, 8903a and 8906. P.L. 91-173, §402(g) (Vol. II, p. 489) cites §8101(17); §412(a)(1) cites chapter 81; §426(a) cites §553; and §428(b) cites §§554 and 5332 of Title 5. Social Security Act §1106 has a footnote to this title. Social Security Act §907(c) cites §507 of the Elementary and Secondary Education Act of 1965; a footnote refers readers instead to 5 U.S.C. 3371-3376. 14 U.S.C. 707(e)(3) (Vol. II, p. 145) cites §8133(a)(2) and (a)(3) of title 5.]

APPENDIX

REORGANIZATION PLAN NO. 2 of 1946[218]

Approved December 20, 1945 (60 Stat. 1095)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 16, 1946, pursuant to the provisions of the Reorganization Act of 1945, approved December 20, 1945.

---

[216] P.L. 99-272, §15202(b)(1), struck out "The" and substituted "(1) Except as provided in paragraph (2), the".

[217] P.L. 99-272, §15202(b)(2), added paragraph (2).

[218] This plan became effective July 16, 1946.

FEDERAL SECURITY AGENCY[219] AND DEPARTMENT OF LABOR

SECTION 1. *Children's Bureau.*—(a) The Children's Bureau in the Department of Labor, exclusive of its Industrial Division, is transferred to the Federal Security Agency. All functions of the Children's Bureau and of the Chief of the Children's Bureau except those transferred by subsection (b) of this section, all functions of the Secretary of Labor under Title V of the Social Security Act (49 Stat. 620, ch. 531), as amended, and all other functions of the Secretary of Labor relating to the foregoing functions are transferred to the Federal Security Administrator and shall be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he shall designate, except that the functions authorized by section 2 of the act of April 9, 1912 (37 Stat. 79, ch. 73), as amended, and such other functions of the Federal Security Agency as the Administrator may designate, shall be administered, under his direction and control, through the Children's Bureau.

(b) The functions of the Children's Bureau and of the Chief of the Children's Bureau under the Fair Labor Standards Act of 1938 (52 Stat. 1060, ch. 676), as amended, are transferred to the Secretary of Labor and shall be performed under his direction and control by such officers and employees of the Department of Labor as he shall designate.

SEC. 2. *Vital statistics.*—The functions of the Secretary of Commerce, the Bureau of the Census, and the Director of the Bureau of the Census with respect to vital statistics (including statistics on births, deaths, marriages, divorces, and annulments) are transferred to the Federal Security Administrator and shall be performed under his direction and control by the United States Public Health Service or by such officers and employees of the Federal Security Agency as the Administrator shall designate.

[SEC. 3. Repealed.**]**

SEC. 4. *Social Security Board.*—The functions of the Social Security Board in the Federal Security Agency, together with the functions of its chairman, are transferred to the Federal Security Administrator and shall be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he shall designate. The Social Security Board is abolished.

SEC. 5. *Assistant heads of Federal Security Agency.*—In addition to the existing Assistant Federal Security Administrator, there shall be not to exceed two assistant heads of the Federal Security Agency, each of whom shall be appointed by the Federal Security Administrator under the classified civil service, receive a salary at the rate of $10,000 per annum, and perform such duties and head such constituent unit of the Federal Security Agency as the Administrator may provide.

SEC. 6. *Functions under act of June 20, 1936, with respect to the blind.*—The functions of the Office of Education and of the Commissioner of Education under the act of June 20, 1936 (49 Stat. 1559, ch. 638) are transferred to the Federal Security Administrator and shall be performed under his direction and control by such officers and employees of the Federal Security Agency as he shall designate.

SEC. 7. *Assistant Commissioner of Education.*—The functions of the Assistant Commissioner of Education created by the act of May 26, 1930 (46 Stat. 384, ch. 330) are transferred to the Office of Education to be performed under the direction and control of the Commissioner of Education by such officers or employees of the Office as he may designate with the approval of the Federal Security Administrator. The Office of Assistant Commissioner of Education is abolished.

SEC. 8. *Federal Board for Vocational Education.*—The Federal Board for Vocational Education and its functions are abolished.

SEC. 9. *Board of Visitors of Saint Elizabeth's Hospital.*—The Board of Visitors of Saint Elizabeth's Hospital and its functions are abolished.

SEC. 10. *Coordination of grant-in-aid programs.*—In order to coordinate more fully the administration of grant-in-aid programs by officers and constituent units of the Federal Security Agency, the Federal Security Administrator shall establish, insofar as practicable, (a) uniform standards and procedures relating to fiscal, personnel, and the other requirements common to two or more such programs, and (b) standards and procedures under which a State agency participating in more than one such program may submit a single plan of operation and be subject to a single Federal fiscal and administrative review of its operation.

SEC. 11. *Winding up of affairs.*—Suitable measures shall be taken by the Federal Security Administrator to wind up those outstanding affairs of the agencies herein abolished which are not otherwise disposed of by this plan.

---

[219] See "Administration of the Social Security Act" under Preface, p. iii for explanation of change of name from "Federal Security Administrator" and "Federal Security Agency" to "Secretary" and "Department of Health and Human Services".

SEC. 12. *Transfer of personnel, property, records, and funds.*—The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Bureau of the Budget shall determine to relate primarily to the functions transferred hereunder are transferred to the respective agencies concerned for use in the administration of the functions so transferred, except that all of the personnel, property, records, and funds of the Industrial Division of the Children's Bureau shall be transferred to such agency or agencies of the Department of Labor as the Secretary of Labor shall designate. Any of the personnel transferred under this plan which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions transferred to such agency shall be retransferred under existing law to other positions in the Government or separated from the service.

* * * * * * *

REORGANIZATION PLAN NO. 2 OF 1949

Approved June 20, 1949 (63 Stat. 1065)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 20, 1949, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.[220]

DEPARTMENT OF LABOR

SECTION 1. *Bureau of Employment Security.*—The Bureau of Employment Security of the Federal Security Agency, including the United States Employment Service and the Unemployment Insurance Service, together with the functions thereof, is transferred as an organizational entity to the Department of Labor. The functions of the Federal Security Administrator with respect to employment services, unemployment compensation, and the Bureau of Employment Security, together with his functions under the Federal Unemployment Tax Act (as amended, and as affected by the provisions of Reorganization Plan No. 2 of 1946, 60 Stat. 1095, 26 U.S.C. 1600-1611), are transferred to the Secretary of Labor. The functions transferred by the provisions of this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

SEC. 2. *Veterans' Placement Service Board.*—The functions of the Veterans' Placement Service Board under Title IV of the Servicemen's Readjustment Act of 1944 (58 Stat. 284, as amended; 38 U.S.C. 695-695f) are transferred to and shall be performed by the Secretary of Labor. The functions of the Chairman of the said Veterans' Placement Service Board are transferred to the Secretary of Labor and shall be performed by the Secretary or, subject to his direction and control, by the Chief of the Veterans' Employment Service. The Veterans' Placement Service Board is abolished.

SEC. 3. *Federal Advisory Council.*—The Federal Advisory Council established pursuant to section 11(a) of the Act of June 6, 1933 (48 Stat. 116, as amended, 29 U.S.C. 49j(a)), is hereby transferred to the Department of Labor and shall, in addition to its duties under the aforesaid Act, advise the Secretary of Labor and the Director of the Bureau of Employment Security with respect to the administration and coordination of the functions transferred by the provisions of this reorganization plan.

SEC. 4. *Personnel, records, property, and funds.*—There are transferred to the Department of Labor, for use in connection with the functions transferred by the provisions of this reorganization plan, the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Bureau of Employment Security, together with so much as the Director of the Bureau of the Budget shall determine of other personnel, property, records, and unexpended balances of appropriations, allocations, and funds (available or to be made available) of the Federal Security Agency which relate to functions transferred by the provisions of this reorganization plan.

* * * * * * *

[*Internal References.*—Social Security Act title III; and the catchlines to §§702 and 1106 have footnotes referring to this reorganization plan.]

---

[220] This plan became effective August 20, 1949.

REORGANIZATION PLAN NO. 19 OF 1950[221] [222]

Approved June 20, 1949 (64 Stat. 1271)

* * * * * * *

[*Internal Reference.*—There is a footnote referring to Reorganization Plan No. 19 of 1950 at Social Security Act §1106 catchline.]

REORGANIZATION PLAN NO. 1 OF 1953

Approved June 20, 1949 (67 Stat. 631)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 12, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.[223]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECTION 1. *Creation of Department; Secretary.*—There is hereby established an executive department, which shall be known as the Department of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Department). There shall be at the head of the Department a Secretary of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate, and who shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 2. *Under Secretary and Assistant Secretaries.*—There shall be in the Department an Under Secretary of Health, Education, and Welfare and two Assistant Secretaries of Health, Education, and Welfare, each of whom shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter provided by law for under secretaries and assistant secretaries, respectively, of executive departments. The Under Secretary (or, during the absence or disability of the Under Secretary or in the event of a vacancy in the office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act as Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

---

[221] This plan became effective May 24, 1950.

[222] P.L. 89-554, §8(a), repealed Reorganization Plan No. 19 of 1950, effective September 6, 1966. Reorganization Plan No. 19 of 1950 formerly read as follows:

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

EMPLOYEES' COMPENSATION FUNCTIONS

SECTION 1. *Bureau of Employees' Compensation.*—The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, is transferred to the Department of Labor and shall be administered under the direction and supervision of the Secretary of Labor. The functions of the Federal Security Administrator, and of the Federal Security Agency, with respect to the Bureau of Employees' Compensation and with respect to employees' compensation including workmen's compensation are transferred to the Secretary of Labor: *Provided,* That there are not transferred by the provisions of this reorganization plan (1) any function of the Public Health Service; (2) any function of the Federal Security Agency or the Federal Security Administrator under the Vocational Rehabilitation Act, as amended (including the function of assuring the development and accomplishment of State rehabilitation plans affecting beneficiaries under the Federal Employees' Compensation Act); nor (3) the function of developing or establishing rehabilitation services or facilities. The functions transferred by the provisions of this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

SEC. 2. *Employees' Compensation Appeals Board.*—The Employees' Compensation Appeals Board of the Federal Security Agency, together with the functions thereof, is transferred to the Department of Labor. The functions of the Federal Security Administrator with respect to the Employees' Compensation Appeals Board are transferred to the Secretary of Labor. The Board shall continue to have authority to hear and, subject to applicable law and the rules and regulations of the Secretary of Labor, to make final decision on appeals taken from determinations and awards with respect to claims of employees of the Federal Government or of the District of Columbia.

SEC. 3. *Personnel, records, property, and funds.*—There are transferred to the Department of Labor, for use in connection with the functions transferred by the provisions of this reorganization plan, the personnel, property, records and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board, together with so much as the Director of the Bureau of the Budget shall determine of other personnel, property, records and unexpended balances of appropriations, allocations, and funds (available or to be made available) of the Federal Security Agency which relate to functions transferred by the provisions of this reorganization plan.

[223] This plan became effective April 11, 1953.

[SEC. 3. Repealed.]

SEC. 4. *Commissioner of Social Security.*—There shall be in the Department a Commissioner of Social Security who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions concerning social security and public welfare as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter fixed by law for Grade GS-18 of the general schedule established by the Classification Act of 1949, as amended.

SEC. 5. *Transfers to the Department.*—All functions of the Federal Security Administrator are hereby transferred to the Secretary. All agencies of the Federal Security Agency, together with their respective functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), and all other functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Federal Security Agency are hereby transferred to the Department.

SEC. 6. *Performance of Functions of the Secretary.*—The Secretary may from time to time make such provisions as the Secretary deems appropriate authorizing the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department.

SEC. 7. *Administrative Services.*—In the interest of economy and efficiency the Secretary may from time to time establish central administrative services in the fields of procurement, budgeting, accounting, personnel, library, legal, and other services and activities common to the several agencies of the Department; and the Secretary may effect such transfers within the Department of the personnel employed, the property and records used or held, and the funds available for use in connection with such administrative service activities as the Secretary may deem necessary for the conduct of any services so established: *Provided*, That no professional or substantive function vested by law in any officer shall be removed from the jurisdiction of such officer under this section.

SEC. 8. *Abolitions.*—The Federal Security Agency (exclusive of the agencies thereof transferred by section 5 of this reorganization plan), the offices of Federal Security Administrator and Assistant Federal Security Administrator created by Reorganization Plan No. I (53 Stat. 1423), the two offices of assistant heads of the Federal Security Agency created by Reorganization Plan No. 2 of 1946 (60 Stat. 1095), and the office of Commissioner for Social Security created by section 701 of the Social Security Act, as amended (64 Stat. 558), are hereby abolished. The Secretary shall make such provisions as may be necessary in order to wind up any outstanding affairs of the Agency and offices abolished by this section which are not otherwise provided for in this reorganization plan.

SEC. 9. *Interim Provisions.*—The President may authorize the persons who immediately prior to the time this reorganization plan takes effect occupy the offices of Federal Security Administrator, Assistant Federal Security Administrator, assistant heads of the Federal Security Agency, and Commissioner for Social Security to act as Secretary, Under Secretary, and Assistant Secretaries of Health, Education, and Welfare and as Commissioner of Social Security, respectively, until those offices are filled by appointment in the manner provided by sections 1, 2, and 4 of this reorganization plan, but not for a period of more than 60 days. While so acting, such persons shall receive compensation at the rates provided by this reorganization plan for the offices the functions of which they perform.

* * * * * * *

[*Internal Reference.*—There is a footnote referring to Reorganization Plan No. 1 of 1953 at Social Security Act §701 catchline.]

TITLE 10, UNITED STATES CODE
Armed Forces
Subtitle A—General Military Law

* * * * * * *

PART II—PERSONNEL

* * * * * * *

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE
SUBCHAPTER I—GENERAL PROVISIONS

§801. Article 1. Definitions

* * * * * * *

(11) "Law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

* * * * * * *

(13) "Judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.[1]

* * * * * * *

CHAPTER 55—MEDICAL AND DENTAL CARE

* * * * * * *

§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than 30[2] days, the Secretary of Defense, after consulting with the other administering Secretaries[3], shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1976 of this title, except that—

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service;

(3) not more than one eye examination may be provided to a patient in any calendar year;[4]

(4) under joint regulations to be prescribed by the administering Secretaries[5], the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis;[6]

(6) inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of 60 days in any year;[7]

(7) services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that such services may be provided in any case in which another insurance plan or program provides primary coverage for[8] the services;[9]

(8) services of pastoral counselors, family and child counselors, or marital counselors may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral;[10]

(9) special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis;[11]

---

[1] P.L. 98-209, §2(a), amended paragraph (13) in its entirety.

[2] P.L. 98-94, §1268(4)(A), struck out "thirty" and substituted "30".

[3] P.L. 98-557, §19(7)(B), struck out "Secretary of Health and Human Services" and substituted "other administering Secretaries".

[4] P.L. 98-525, §632(a)(1), amended paragraph (3) in its entirety.

[5] P.L. 98-557, §19(7)(A), struck out "Secretary of Defense and the Secretary of Health and Human Services" and substituted "administering Secretaries".

[6] P.L. 98-94, §931(a)(1)(A), struck out the period and substituted "; and".
P.L. 98-525, §1401(e)(4)(A)(i), struck out "and".

[7] P.L. 98-94, §931(a)(1)(B), added paragraph (6).
P.L. 98-525, §1401(e)(4)(A)(ii), struck out the period and substituted a semicolon.

[8] P.L. 99-661, §703, struck out "pays for at least 75 percent of" and substituted "provides primary coverage for".

[9] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (7).

[10] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (8).

[11] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (9).

(10) therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided;[12]

(11) treatment of obesity may not be provided if obesity is the sole or major condition treated;[13]

(12) surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided;[14]

(13) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in clause (4); and[15]

(14) the prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.[16]

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater.

(2) Except as provided in clause (3), the first $50 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries[17]) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries[18].

(d) Under joint regulations to be prescribed by the administering Secretaries[19], in the case of a dependent, as defined in section 1072(2)(A) or (D) of this title, of a member of the uniformed services on active duty for a period of more than 30[20] days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:[21]

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per

---

[12] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (10).

[13] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (11).

[14] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (12).

[15] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (13).

[16] P.L. 98-525, §1401(e)(4)(A)(iii), added paragraph (14).

[17] P.L. 98-557, §19(7)(A), struck out "Secretary of Defense and the Secretary of Health and Human Services" and substituted "administering Secretaries".

[18] See footnote 17.

[19] See footnote 17.

[20] P.L. 98-94, §1268(4)(A), struck out "thirty" and substituted "30".

[21] P.L. 98-525, §1405(23), struck out the period and substituted "as follows:".

month. The amounts to be similarly paid by members in all other pay grades shall be determined undr joint regulations to be prescribed by the administering Secretaries[22].

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Govenment's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries[23].

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 90th percentile of billed charges made for similar services in the same locality during the base period.

(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries[24], and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.[25]

(i) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services--

(1) provided under the program for the handicapped under subsection (d);

(2) provided as residential treatment care;

(3) provided as partial hospital care; or

(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.[26]

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries[27] which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or other institutional facility providing services for which payment may be made under a plan covered by this section.[28]

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries[29] and such other entities as the Secretary considers appropriate; and

---

[22] See footnote 17.

[23] See footnote 17.

[24] P.L. 98-557, §19(7)(B), struck out "Secretary of Health and Human Services" and substituted "other administering Secretaries".

[25] P.L. 98-525, §1401(e)(4)(B), struck out "The base period shall be adjusted at least once a year." and substituted this sentence.

[26] P.L. 98-94, §931(a)(2), added subsection (i).

[27] See footnote 17.

[28] P.L. 98-94, §931(a)(2), added subsection (j).

[29] See footnote 24.

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries[30] and such other entities as the Secretary considers appropriate.[31]

(l)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.[32]

* * * * * * *

§1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries[33], shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).[34]

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $50 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care.

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease[35] incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.[36]

(3) A dependent covered by section 1072(2)(F) of this title.

However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(d) The provisions of section 1079(j) of this title shall apply to a plan covered by this section.[37]

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076-1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries[38], the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available.

---

[30] See footnote 24.

[31] P.L. 98-94, §931(a)(2), added subsection (k).

[32] P.L. 99-661, §652(d), added subsection (l).

[33] P.L. 98-557, §19(13)(A), struck out "Secretary of Health and Human Services" and substituted "other administering Secretaries".

[34] P.L. 98-525, §632(a)(2), added this sentence.

[35] P.L. 99-661, §604(f)(1)(C), struck out "or illness" and substituted ", illness, or disease".

[36] P.L. 99-145, §652(b), amended paragraph (2) in its entirety.

[37] P.L. 98-94, §931(b), amended subsection (d) in its entirety.

[38] P.L. 98-557, §19(13)(B), struck out "Secretary of Defense and the Secretary of Health and Human Services" and substituted "administering Secretaries".

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Notwithstanding subsection (d) or any other provision of this chapter, no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in Veterans' Administration facilities.

* * * * * * *

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

CHAPTER 151—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

* * * * * * *

§2546. Shelter for homeless; incidental services[39]

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.
(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.[40]

(e)[41] The Secretary of Defense shall prescribe regulations for the administration of this section.

* * * * * * *

[*Internal References.*—Social Security Act §465(a)(2)(A) cites §801(11) and §801(13) of Title 10 and §1866(a)(1)(J) cites §§1079 and 1086 of Title 10, and §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14) [State], and §1612(a)(2)(A) [SSI] have footnotes to 10 U.S.C. 2546.]

---

[39] P.L. 98-94, §305(a)(1), added §2546.
[40] P.L. 99-167, §825(2), added this subsection (d).
[41] P.L. 99-167, §825(1), redesignated the former subsection (d) as subsection (e).

TITLE 11, UNITED STATES CODE

BANKRUPTCY

* * * * * * *

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

* * * * * * *

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

* * * * * * *

§523. Exceptions to discharge

(a) A discharge under section 727, 1141,,[1] 1228(a), 1228(b),[2] or 1328(b) of this title does not discharge an individual debtor from any debt—

* * * * * * *

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree[3] or other order of a court of record[4], determination made in accordance with State or territorial law by a governmental unit,[5] or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State[6]); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

* * * * * * *

[*Internal Reference.*—Social Security Act §456(b) cites title 11.]

TITLE 14—UNITED STATES CODE

COAST GUARD

PART I—REGULAR COAST GUARD

* * * * * * *

CHAPTER 7—COOPERATION WITH OTHER AGENCIES

* * * * * * *

§147a. Department of Health and Human Services

(a) The Commandant may assist the Secretary of Health and Human Services in providing medical emergency helicopter transportation services to civilians. The Commandant may prescribe conditions, including reimbursement, under which resources may be provided under this section. The following specific limitations apply to assistance provided under this section:

(1) Assistance may be provided only in areas where Coast Guard units able to provide the assistance are regularly assigned. Coast Guard units may not be transferred from one area to another to provide the assistance.

(2) Assistance may be provided only to the extent it does not interfere with the performance of the Coast Guard mission.

(3) Providing assistance may not cause an increase in amounts required for the operation of the Coast Guard.

---

[1] As in original. One comma should be stricken.

[2] P.L. 99-554, §257(n), inserted ", 1228(a), 1228(b),".

[3] P.L. 99-554, §281(1), struck out a comma.

[4] P.L. 98-353, §454(b)(1), inserted "or other order of a court of record".

[5] P.L. 99-554, §281(2), inserted ", determination made in accordance with State or territorial law by a governmental unit,".

[6] P.L. 98-353, §454(b)(2), inserted ", or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State".

(b) An individual (or the estate of that individual) who is authorized by the Coast Guard to provide a service under a program established under subsection (a) and who is acting within the scope of that individual's duties is not liable for injury to, or loss of, property or personal injury or death that may be caused incident to providing the service.

* * * * * * *

PART II—COAST GUARD RESERVE AND AUXILIARY

* * * * * * *

CHAPTER 21—COAST GUARD RESERVE

Subchapter A

* * * * * * *

§707. Temporary members of the Reserve; disability or death benefits

(a) If a temporary member of the Reserve is physically injured, or dies as a result of physical injury, and the injury is incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty, the law authorizing compensation for employees of the United States suffering injuries while in the performance of their duties, applies, subject to this section. That law shall be administered by the Secretary of Labor to the same extent as if the member was a civil employee of the United States and was injured in the performance of that duty. For benefit computation, regardless of pay or pay status, the member is considered to have had monthly pay of the monthly equivalent of the minimum rate of basic pay in effect for grade GS-9 of the General Schedule on the date the injury is incurred.

(b) This section does not apply if the workmen's compensation law of a State, a territory, or another jurisdiction provides coverage because of a concurrent employment status of the temporary member. When the temporary member or a dependent is entitled to a benefit under this section and also to a concurrent benefit from the United States on account of the same disability or death, the temporary member or dependent, as appropriate, shall elect which benefit to receive.

(c) If a claim is filed under this section with the Secretary of Labor for benefits because of an alleged injury or death, the Secretary of Labor shall notify the Commandant who shall direct an investigation into the facts surrounding the alleged injury or death. The Commandant shall then certify to the Secretary of Labor whether or not the injured or deceased person was a temporary member of the Reserve, the person's military status, and whether or not the injury or death was incurred incident to military service.

(d) A temporary member of the Reserve, who incurs a physical disability or contracts sickness or disease while performing a duty to which the member has been assigned by competent authority, is entitled to the same hospital treatment afforded a member of the Regular Coast Guard.

(e) In administering section 8133 of title 5, for a person covered by this section—

(1) the percentages applicable to payments under that section are—

(A) 45 percent under subsection (a)(2) of that section, where the member died fully or currently insured under title II of the Social Security Act (42 U.S.C. 401 et seq.), with no additional payments for a child or children so long as the widow or widower remains eligible for payments under that subsection;

(B) 20 percent under subsection (a)(3) of that section, for one child, and 10 percent additional for each additional child, not to exceed a total of 75 percent, where the member died fully or currently insured under title II of the Social Security Act; and

(C) 25 percent under subsection (a)(4) of that section, if one parent was wholly dependent for support upon the deceased member at the time of the member's death and the other was not dependent to any extent; 16 percent to each if both were wholly dependent; and if one was, or both were, partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(2) payments may not be made under subsection (a)(5) of that section; and

(3) the Secretary of Labor shall inform the Secretary of Health and Human Services whenever a claim is filed and eligibility for compensation is established under subsection (a)(2) or (a)(3) of section 8133 of title 5. The Secretary of Health and Human Services shall then certify to the Secretary of Labor whether or not the member concerned was fully or currently insured under title II of the Social Security Act at the time of the member's death.

* * * * * * *

[*Internal References.*—The catchline for Social Security Act §201 has a footnote referring to 14 U.S.C. 707(e)(3).]

TITLE 18, UNITED STATES CODE

CRIMES AND CRIMINAL PROCEDURE
PART I—CRIMES

* * * * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * * * *

§203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept[1] any compensation for any services rendered or to be rendered either personally or by[2] another—

(A) at a time when such person[3] is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect[4], Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person[5] is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission;[6] or

(2) knowingly[7] gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, or employee;[8]

shall be fined under this title[9] or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(b)[10] A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee[11] has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise;[12] or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection[13] shall not

---

[1] P.L. 99-646, §47(a)(1)(A), struck out "receives or agrees to receive, or asks, demands, solicits, or seeks," and substituted a dash and "(1) demands, seeks, receives, accepts, or agrees to receive or accept".

[2] P.L. 99-646, §47(a)(1)(B), struck out "by himself or" and substituted "personally or by".

[3] P.L. 99-646, §47(a)(1)(C), struck out "(1) at a time when he" and substituted "(A) at a time when such person".

[4] P.L. 99-646, §47(a)(1)(D), struck out "from the District of Columbia, Delegate Elect from the District of Columbia" and substituted ", Delegate Elect".

[5] P.L. 99-646, §47(a)(1)(E), struck out "(2) at a time when he" and substituted "(B) at a time when such person".

[6] P.L. 99-646, §47(a)(1)(F), struck out a comma and substituted a semicolon.

[7] P.L. 99-646, §47(a)(2)(A), struck out "(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly" and substituted "(2) knowingly".

[8] P.L. 99-646, §47(a)(2)(B), struck out a dash and substituted a semicolon.

[9] P.L. 99-646, §47(a)(2)(C), struck out "Shall be fined not more than $10,000" and substituted "shall be fined under this title".

[10] P.L. 99-646, §47(a)(4), redesignated subsection (c) as subsection (b).

[11] P.L. 99-646, §47(a)(3)(A), struck out "(1) in which he" and substituted a dash and "(1) in which such employee".

[12] P.L. 99-646, §47(a)(3)(B), struck out a comma and substituted a semicolon and realigned paragraph (2) to make it blocked and indented 4 spaces instead of running.

[13] P.L. 99-646, §47(a)(3)(C), struck out "he is serving: *Provided*, That clause (2)" and substituted "such employee is serving except that paragraph (2) of this subsection".

apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

* * * * * * *

§205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

* * * * * * *

§207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge,

accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of 0-9 or above as described in section 201 of title 37, United States Code; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay 0-7 or 0-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government

Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

§208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.

§209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days[14].

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section

---

[14] P.L. 99-646, §70, inserted "or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days".

501(c)(3) of the Internal Revenue Code of 1954 and which is exempt from taxation under section 501(a) of such Code.

* * * * * * *

CHAPTER 37—ESPIONAGE AND CENSORSHIP

* * * * * * *

§792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

§793. Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.[15]

§794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

---

[15] P.L. 99-399, §1306(a), added subsection (h).

(3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amount[16] from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.[17]

§795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§798. Disclosure of classified information[18]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

---

[16] As in original.

[17] P.L. 99-399, §1306(b), added subsection (d).

[18] So enacted. See second section 798 enacted on June 30, 1953, set out below.

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

§798. Temporary extension of section 794[19]

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

§799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

* * * * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * * * *

§1028. Fraud and related activity in connection with identification documents

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document or a false identification document;

(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States; or

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

---

[19] So enacted. See first section 798 enacted on Oct. 31, 1951, set out above.

(6) possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without authority knowing that such document was stolen or produced without authority;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) a fine of not more than $25,000 or imprisonment for not more than five years, or both, if the offense is—

(A) the production or transfer of an identification document or false identification document that is or appears to be—

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or adriver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification documents; or

(C) an offense under paragraph (5) of such subsection;

(2) a fine of not more than $15,000 or imprisonment for not more than three years, or both, if the offense is—

(A) any other production or transfer of an identification document or false identification document; or

(B) an offense under paragraph (3) of such subsection; and

(3) a fine of not more than $5,000 or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that—

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.

(d) As used in this section—

(1) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(2) the term "produce" includes alter, authenticate, or assemble;

(3) the term "document-making implement" means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

(4) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification; and

(5) the term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title[30].

* * * * * * *

CHAPTER 83—POSTAL SERVICE

* * * * * * *

§1738. Mailing private identification documents without a disclaimer

(a) Whoever, being in the business of furnishing identification documents for valuable consideration, and in the furtherance of that business, uses the mails for the mailing, carriage in the mails, or delivery of, or causes to be transported in interstate or foreign commerce, any identification document—

---

[30] P.L. 99-646, §44(a), struck out "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" and substituted "chapter 224 of this title".

(1) which bears a birth date or age purported to be that of the person named in such identification document; and

(2) knowing that such document fails to carry diagonally printed clearly and indelibly on both the front and back "NOT A GOVERNMENT DOCUMENT" in capital letters in not less than twelve point type;

shall be fined not more than $1,000, imprisoned not more than one year, or both.

(b) For purposes of this section the term "identification document" means a document which is of a type intended or commonly accepted for the purpose of identification of individuals and which is not issued by or under the authority of a government.

* * * * * * *

CHAPTER 105—SABOTAGE

§2151. Definitions

As used in this chapter:

The words "war material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words "war premises" include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words "war utilities" include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

The words "associate nation" mean any nation at war with any nation with which the United States is at war.

The words "national-defense material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words "national-defense premises" include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words "national-defense utilities" include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

§2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§2153. Destruction of war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2154. Production of defective war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war materials, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2155. Destruction of national-defense materials, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2156. Production of defective national-defense material, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

* * * * * * *

CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

* * * * * * *

§2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.

§2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined not more than $1,000 or imprisoned not more than seven years, or both.

§2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

§2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.

§2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

§2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General" means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B)(3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(l) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

§2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

§2388. Activities affecting armed forces during war

(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in said subsection (a).

(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States.

§2389. Recruiting for service against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined not more than $1,000 or imprisoned not more than five years, or both.

§2390. Enlistment to serve against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined $100 or imprisoned not more than three years, or both.

* * * * * * *

[*Internal References.*—Social Security Act §202(u)(1)(A) cites chapters 37, 105, and 115 of title 18; §1114(h)(1) cites §§203, 205, and 209 of title 18; §1902(a)(4) cites §§207 and 208 of title 18; and the catchlines for §§208, 1107, 1632, 1877, and 1909, and §1862(d)(1)(C) have footnotes referring to 18 U.S.C. 1028 and 1738.]

TITLE 22, UNITED STATES CODE

Foreign Relations and Intercourse

* * * * * * *

CHAPTER 48—TAIWAN RELATIONS

* * * * * * *

§3310. Employment of United States Government agency personnel

(a) Separation from Government service; reemployment or reinstatement upon termination of Institute employment; benefits

(1) Under such terms and conditions as the President may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits with[21] the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

---

[21] As in original. Probably should be "which"

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related death, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to April 10, 1979, shall receive the benefits of this section for the period of such service.

(b) Employment of aliens on Taiwan

Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Institute employees not deemed United States employees

Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18.

(d) Tax treatment of amounts paid Institute employees

(1) For purposes of sections 911 and 913 of title 26, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of title 26.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of title 26 and title II of the Social Security Act [42 U.S.C. 401 et seq.].

* * * * * * *

[*Internal Reference.*—Social Security Act §210(a)(5)(B)(i)(III) cites §3310 of chapter 48 of title 22.]

TITLE 28, UNITED STATES CODE

* * * * * * *

JUDICIARY AND JUDICIAL PROCEDURE

PART I—ORGANIZATION OF COURTS

* * * * * * *

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

* * * * * * *

§294. Assignment of retired Justices or judges to active duty

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United

States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit district or bankruptcy judge[1] judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit, district judge or bankruptcy judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster or senior judges. Any such retired judge of the United States may be designated and assigned by the chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit, district judge or bankruptcy judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

* * * * * * *

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

§371. Retirement on salary; retirement in senior status[2]

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

* * * * * * *

PART IV—JURISDICTION AND VENUE

CHAPTER 81—SUPREME COURT

* * * * * * *

---

[1] As in original. One "judge" should be stricken.

[2] P.L. 98-353, §204(a), amended §371 in its entirety.

§1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

* * * * * * *

§1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1954.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

* * * * * * *

PART V—PROCEDURE

* * * * * * *

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

* * * * * * *

§2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal filing of such of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

* * * * * * *

PART VI—PARTICULAR PROCEEDINGS

* * * * * * *

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

* * * * * * *

§2411. Interest

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment[3] rate established under section 6621 of the Internal Revenue Code of 1954 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

§2412. Costs and fees

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or[4] any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or[5] any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action,[6] brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.[7]

---

[3] P.L. 99-514, §1511(c)(18), struck out "an annual" and substituted "the overpayment".
[4] P.L. 99-80, §2(a)(1), struck out "and" and substituted "or".
[5] See footnote 4.
[6] P.L. 99-80, §2(a)(2), inserted ", including proceedings for judicial review of agency action,".

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(2) For the purposes of this subsection—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000[8] at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;[9]

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;[10]

(D) "position of the United States" means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;[11]

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;[12]

(F) "court" includes the United States Claims Court;[13]

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement; and[14]

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government.[15]

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the

---

[7] P.L. 99-80, §2(b), added this sentence.

[8] P.L. 99-80, §2(c)(1)(A), struck out "$1,000,000" and substituted "$2,000,000".

[9] P.L. 99-80, §2(c)(1)(B), amended clause (ii) in its entirety and struck out clause (iii).

[10] P.L. 99-80, §2(c)(2)(A), struck out a period and substituted a semicolon.

[11] P.L. 99-80, §2(c)(2)(B), added subparagraph (D).

[12] P.L. 99-80, §2(c)(2)(B), added subparagraph (E).

[13] P.L. 99-80, §2(c)(2)(B), added subparagraph (F).

[14] P.L. 99-80, §2(c)(2)(B), added subparagraph (G).

[15] P.L. 99-80, §2(c)(2)(B), added subparagraph (H).

United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.[16]

(5) The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title, the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1954 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.[17]

* * * * * * *

§2414. Payment of judgments and compromise settlements

Except as provided by the Contract Disputes Act of 1978, payment of final judgments rendered by a district court or the Court of International Trade against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

* * * * * * *

[*Internal References.*—Social Security Act §205(h) cites §§1331 and 1346; §209(end) cites §§294 and 371(b); §§304(a), 1116(a)(3), and 1128A(e) cite §2112 of title 28; and §§304(c), 1116(a)(5), and 1128A(e) cite §1254 of title 28.]

TITLE 29, UNITED STATES CODE[18]

LABOR

* * * * * * *

§206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

---

[16] P.L. 99-80, §2(d), amended paragraph (4) in its entirety.

[17] P.L. 99-80, §2(e), added subsection (f).

[18] This title has *not* been enacted into positive law. Section 206 of this title is section 6 of the Fair Labor Standards Act of 1938 (Act of June 25, 1938).

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;

* * * * * * *

[*Internal References.*—Social Security Act §231(b)(1)(A) and (b)(1)(B) cite §206(a)(1) of title 29.]

TITLE 31, UNITED STATES CODE[1]

MONEY AND FINANCE

* * * * * * *

§1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

* * * * * * *

§3111. New issue used to buy, redeem, or refund outstanding obligations

An obligation may be issued under this chapter to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of the United States Government. Under regulations of the Secretary of the Treasury, money received from the sale of an obligation and other money in the general fund of the Treasury may be used in making the purchases, redemptions, or refunds.

* * * * * * *

§3328. Paying checks and drafts

(a)(1) Except as provided in sections 3329 and 3330 of this title, a check drawn on the Treasury may be paid at any time. However, if the Secretary of the Treasury is on notice of a question of law or fact about the check when the check is presented, the Secretary shall defer payment until the Comptroller General settles the question.

(2) When the Secretary decides it is appropriate, the Secretary may transfer—

(A) the amount of an unpaid check drawn on the Treasury from the account on which it was drawn to a consolidated account of the Treasury available for paying checks; and

(B) an amount available, but not required, for paying checks drawn on the Treasury to the appropriate receipt account.

(b)(1) If a check issued by a disbursing official and drawn on a designated depositary is not paid by the last day of the fiscal year after the fiscal year in which the check was issued, the amount of the check is—

(A) withdrawn from the account with the depositary; and

(B) deposited in the Treasury for credit to a consolidated account of the Treasury.

(2) A claim for the proceeds of an unpaid check under this subseciton may be paid from a consolidated account by a check drawn on the Treasury on settlement by the Comptroller General.

(c) A limitation imposed on a claim against the United States Government under section 3702 of this title does not apply to an unpaid check drawn on the Treasury or a designated depositary.

(d) With the approval of the Comptroller General, the Secretary may prescribe regulations the Secretary decides are necessary to carry out subsections (a)-(c) of this section.

(e)(1) The Secretary shall prescribe regulations on—

---

[1] P.L. 97-258, §1, codified Title 31 of the United States Code, entitled "Money and Finance".

(A) enforcing the speedy presentation of Government drafts;
(B) paying drafts, including the place of payment; and
(C) paying drafts if presentment is not made as required.

(2) Regulations prescribed under paragraph (1) of this subsection shall prevent, as far as may be practicable, Government drafts from being used or placed in circulation as paper currency or a medium of exchange.

§3329. Withholding checks to be sent to foreign countries

(a) The Secretary of the Treasury shall prohibit a check or warrant drawn on public money from being sent to a foreign country from the United States or from a territory or possession of the United States when the Secretary decides that postal, transportation, or banking facilities generally, or local conditions in the foreign country, do not reasonably ensure that the payee—
(1) will receive the check or warrant; and
(2) will be able to negotiate it for full value.

(b)(1) If a check or warrant is prohibited from being sent to a foreign country under subsection (a) of this section, the drawer shall hold the check or warrant until the end of the calendar quarter after the date of the check or warrant.

(2) The Secretary may release the check or warrant for delivery during the calendar quarter after the date of the check or warrant if the Secretary decides that conditions have changed to ensure reasonably that the payee—
(A) will receive the check or warrant; and
(B) will be able to negotiate it for full value.

(3) Unless the Secretary otherwise directs, the drawer shall send at the end of the calendar quarter after the date of the check or warrant the—
(A) withheld check or warrant to the drawee; and
(B) report to the Secretary on—
(i) the name and address of the payee;
(ii) the date, number, and amount of the check or warrant; and
(iii) the account on which the check or warrant was drawn.

(4) The drawee shall transfer the amount of a withheld check or warrant from the account of the drawer to the special deposit account "Secretary of the Treasury, Proceeds of Withheld Foreign Checks". The check or warrant shall be marked "Paid into Withheld Foreign Check Account". After that time, the drawee shall send all withheld checks and warrants to the Comptroller General. The Comptroller General shall credit the accounts of the drawer and drawee.

(c) The Secretary may pay an amount deposited in the special account under subsection (b)(4) of this section with a check drawn on the account when—
(1) a person claiming payment satisfies the Secretary of the right to the amount of the check or warrant (or satisfies the Administrator of Veterans' Affairs if the claim represents a payment under laws carried out by the Administrator); and
(2) the Secretary is reasonably ensured that the person—
(A) will receive the check or warrant; and
(B) will be able to negotiate it for full value.

(d) This section and section 3330 of this title—
(1) apply to a check or warrant whose delivery may be withheld under Executive Order 8389;
(2) do not affect a requirement for a license for delivering and paying a check in payment of a claim under subsection (c) of this section when a license is required by law to authorize delivery and payment; and
(3) do not affect a check or warrant issued for the payment of pay or goods bought by the United States Government in a foreign country.

* * * * * * *

§3331. Substitute checks

(a) In this section, "original check"—
(1) means an order for the payment of money—
(A) payable on demand;
(B) that does not bear interest;
(C) drawn by an authorized disbursing official or agent of the United States Government; and
(D) the amount of which is deposited with the Treasury or another account available for payment; and
(2) does not include coins and currency of the Government.

(b) When the Secretary of the Treasury is satisfied that an original check is lost, stolen, destroyed in any part, or is so defaced that the value to the owner or holder is impaired, the Secretary may issue a substitute check to the owner or holder of the original check. Except as provided in subsection (c) of this section, the substitute check is payable from the amount available to pay the original check.

(c) When the Secretary is satisfied that an original check drawn on a depositary in a foreign country or a territory or possession of the United States is lost, stolen, destroyed in part, or is so defaced that its value to the owner or holder is impaired, the drawer of the original check (or another official designated by the Secretary with the approval of the head of the agency on whose behalf the original check was issued) may issue to the owner or holder of the check a substitute check. The drawer or official shall issue the substitute check by the last day of the fiscal year after the fiscal year in which the original check was issued—

(1) using the current date; and

(2) drawn on the account of the drawer of the original check or another account available for payment of the substitute.

(d) A substitute check issued under this section—

(1) may be paid only if the original check has not been paid;

(2) shall include information necessary to identify the original check;

(3) that is drawn on the Treasury—

(A) is deemed to be an original check; and

(B) is paid under the same conditions as the original check; and

(4) does not relieve a disbursing or certifying official from liability to the Government for payment resulting from erroneously issuing the original check.

(e) Before issuing a substitute check under this section, the Secretary may require the owner or holder of the original check to agree to indemnify the Government with security in the form and amount the Secretary decides is necessary.

(f) Under conditions the Secretary may prescribe, the Secretary may delegate duties and powers of the Secretary under this section to the head of an agency. Consistent with a delegation from the Secretary under this subsection, the head of an agency may delegate those duties and powers to an officer or employee of the agency.

§3332. Checks payable to financial organizations designated by Government officers and employees

(a) In this section, "financial organization" means a bank, savings and loan association or similar institution, or a credit union chartered by the United States Government or a State.

(b) An officer or employee of an agency may designate in writing not more than 3 financial organizations to which a payment of pay of the officer or employee shall be sent without charge[2] and the amount to be sent to each organization. The head of the agency shall authorize a disbursing official to issue a check payable to each of the organizations in the amount designated for—

(1) credit to the checking account of the officer or employee;

(2) deposit of savings for the officer or employee; or

(3) buying shares for the officer or employee.

(c)[3] If more than one officer or employee making a designation under this section designates the same financial organization, the head of the agency may authorize a disbursing official to issue a check payable to the organization for the total amount designated by the officers and employees, accompanied by a schedule stating the amount to be credited to the account of each officer and employee.

(d)[4] Payment by the Government by more than one check, issued under this section and properly endorsed, is complete payment of the amount due to the officer or employee requesting payment.

(e)[5] On the written request of a person to whom payment is to be made, this section may be applied to any class of recurring payments.

(f)[6] The Secretary of the Senate shall prescribe regulations for the Senate in carrying out this section. With the approval of the Committee on House Administration of the House of Representatives, the Clerk of the House shall prescribe regulations for the House in carrying out this section. The Secretary of the Treasury shall prescribe regulations for all other agencies in carrying out this section.

* * * * * * *

§3343. Check forgery insurance fund

(a) The Department of the Treasury has a special deposit revolving fund, the "Check Forgery Insurance Fund". Amounts may be appropriated to the Fund. The Fund consists of amounts—

(1) appropriated to the Fund; and

(2) received under subsection (d) of this section.

---

[2] P.L. 98-369, §2814(a), inserted "without charge".

[3] P.L. 98-369, §2814(b), struck out subsection (c) and redesignated the former subsection (d) as subsection (c).

[4] P.L. 98-369, §2814(b), redesignated the former subsection (e) as subsection (d).

[5] P.L. 98-369, §2814(b), redesignated the former subsection (f) as subsection (e).

[6] P.L. 98-369, §2814(b), redesignated the former subsection (g) as subsection (f).

(b) The Secretary of the Treasury shall pay from the Fund to a payee or special endorsee of a check drawn on the Treasury or a depositary designated by the Secretary the amount of the check without interest if—

(1) the check was lost or stolen without the fault of the payee or a holder that is a special endorsee and whose endorsement is necessary for further negotiation;

(2) the check was negotiated later and paid by the Secretary or a depositary on a forged endorsement of the payee's or special endorsee's name;

(3) the payee or special endorsee has not participated in any part of the proceeds of the negotiation or payment; and

(4) recovery from the forger, a transferee, or a party on the check after the forgery has been or may be delayed or unsuccessful.

(c) Notwithstanding section 1306 of this title, a check drawn on a designated depositary may be paid in the currency of a foreign country when the appropriate accountable official authorizes payment in that currency.

(d) The Secretary shall deposit immediately to the credit of the Fund an amount recovered from a forger or a transferee or party on the check. However, currency of a foreign country recovered because of a forged check drawn on a designated depositary shall be credited to the Fund or to the foreign currency fund that was charged when payment was made under subsection (b) of this section to the payee or special endorsee.

(e) This section does not relieve—

(1) a forger from civil or criminal liability; or

(2) a transferee or party on a check after the forgery from liability—

(A) on the express or implied warranty of prior endorsements of the transferee or party; or

(B) to refund amounts to the Secretary.

* * * * * * *

§3521. Audits by agencies

(a) Each account of an agency shall be audited administratively before being submitted to the Comptroller General. The head of each agency shall prescribe regulations for conducting the audit and designate a place at which the audit is to be conducted. However, a disbursing official of an executive agency may not administratively audit vouchers for which the official is responsible. With the consent of the Comptroller General, the head of the agency may waive any part of an audit.

(b) The head of an agency may prescribe a statistical sampling procedure to audit vouchers of the agency when the head of the agency decides economies will result from using the procedure. The Comptroller General—

(1) may prescribe the maximum amount of a voucher that may be audited under this subsection; and

(2) in reviewing the accounting system of the agency, shall evaluate the adequacy and effectiveness of the procedure.

(c) A disbursing or certifying official acting in good faith under subsection (b) of this section is not liable for a payment or certification of a voucher not audited specifically because of the procedure prescribed under subsection (b) if the official and the head of the agency carry out diligently collection action the Comptroller General prescribes.

(d) Subsections (b) and (c) of this section do not—

(1) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(2) relieve a disbursing or certifying official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

* * * * * * *

§3526. Settlement of accounts

(a) The Comptroller General shall settle all accounts of the United States Government and supervise the recovery of all debts finally certified by the Comptroller General as due the Government.

(b) A decision of the Comptroller General under section 3529 of this title is conclusive on the Comptroller General when settling the account containing the payment.

(c)(1) The Comptroller General shall settle an account of an accountable official within 3 years after the date the Comptroller General receives the account. A copy of the certificate of settlement shall be provided the official.

(2) The settlement of an account is conclusive on the Comptroller General after 3 years after the account is received by the Comptroller General. However, an amount may be charged against the account after the 3-year period when the Government has or may have lost money because the official acted fraudulently or criminally.

(3) A 3-year period under this subsection is suspended during a war.

(4) This subsection does not prohibit—

(A) recovery of public money illegally or erroneously paid;

(B) recovery from an official of a balance due the Government under a settlement within the 3-year period; or

(C) an official from clearing an account of questioned items as prescribed by law.

(d) On settling an account of the Government, the balance certified by the Comptroller General is conclusive on the executive branch of the Government. On the initiative of the Comptroller General or on request of an individual whose accounts are settled or the head of the agency to which the account relates, the Comptroller General may change the account within a year after settlement. The decision of the Comptroller General to change the account is conclusive on the executive branch.

(e) When an amount of money is expended under law for a treaty or relations with a foreign country, the President may—

(1) authorize the amount to be accounted for each year specifically by settlement of the Comptroller General when the President decides the amount expended may be made public; or

(2) make, or have the Secretary of State make, a certificate of the amount expended if the President decides the amount is not to be accounted for specifically. The certificate is a sufficient voucher for the amount stated in the certificate.

(f) The Comptroller General shall keep all settled accounts, vouchers, certificates, and related papers until they are disposed of as prescribed by law.

(g) This subchapter does not prohibit the Comptroller General from suspending an item in an account to get additional evidence or explanations needed to settle an account.

§3527. General authority to relieve accountable officials and agents from liability

(a) Except as provided in subsection (b) of this section, the Comptroller General may relieve a present or former accountable official or agent of an agency responsible for the physical loss or deficiency of public money, vouchers, checks, securities, or records, or may authorize reimbursement from an appropriation or fund available for the activity in which the loss or deficiency occurred for the amount of the loss or deficiency paid by the official or agent as restitution, when—

(1) the head of the agency decides that—

(A) the official or agent was carrying out official duties when the loss or deficiency occurred, or the loss or deficiency occurred because of an act or failure to act by a subordinate of the official or agent; and

(B) the loss or deficiency was not the result of fault or negligence by the official or agent;

(2) the loss or deficiency was not the result of an illegal or incorrect payment; and

(3) the Comptroller General agrees with the decision of the head of the agency.

* * * * * * *

(c) On the initiative of the Comptroller General or written recommendation of the head of an agency, the Comptroller General may relieve a present or former disbursing official of the agency responsible for a deficiency in an account because of an illegal, improper, or incorrect payment, and credit the account for the deficiency, when the Comptroller General decides that the payment was not the result of bad faith or lack of reasonable care by the official. However, the Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General.

(d)(1) When the Comptroller General decides it is necessary to adjust the account of an official or agent granted relief under subsection (a) or (c) of this section, the amount of the relief shall be charged—

(A) to an appropriation specifically provided to be charged; or

(B) if no specific appropriation, to the appropriation or fund available for the expense of the accountable function when the adjustment is carried out.

(2) Subsection (c) of this section does not—

(A) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(B) relieve an accountable official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

(e) Relief provided under this section is in addition to relief provided under another law.

§3528. Responsibilities and relief from liability of certifying officials

(a) A certifying official certifying a voucher is responsible for—

(1) information stated in the certificate, voucher, and supporting records;

(2) the computation of a certified voucher under this section and section 3325 of this title;

(3) the legality of a proposed payment under the appropriation or fund involved; and

(4) repaying a payment—

(A) illegal, improper, or incorrect because of an inaccurate or misleading certificate;

(B) prohibited by law; or

(C) that does not represent a legal obligation under the appropriation or fund involved.

(b)(1)[7] The Comptroller General may relieve a certifying official from liability when the Comptroller General decides that—

(A)[8] the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or

(B)(i)[9] the obligation was incurred in good faith;

(ii)[10] no law specifically prohibited the payment; and

(iii)[11] the United States Government received value for payment.

(2) The Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General.[12]

(c) The Comptroller General shall relieve a certifying official from liability for an overpayment—

(1) to a common carrier under section 3726 of this title when the Comptroller General decides the overpayment occurred only because the administrative audit before payment did not verify transportation rates, freight classifications, or land-grant deductions; or

(2) provided under a Government bill of lading or transportation request when the overpayment was the result of using improper transportation rates or classifications or the failure to deduct the proper amount under a land-grant law or agreement.

* * * * * * *

§3529. Requests for decisions of the Comptroller General

(a) A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General on a question involving—

(1) a payment the disbursing official or head of the agency will make; or

(2) a voucher presented to a certifying official for certification.

(b) The Comptroller General shall issue a decision requested under this section.

* * * * * * *

§3541. Distress warrants

(a) When an official receiving public money before it is paid to the Treasury or a disbursing or certifying official of the United States Government does not submit an account or pay the money as prescribed by law, the Comptroller General shall make the account for the official and certify to the Secretary of the Treasury the amount due the Government.

(b) The Secretary shall issue a distress warrant against the official stating the amount due from the official and any amount paid. The warrant shall be directed to the marshal of the district in which the official resides. If the Secretary intends to take and sell the property of an official that is located in a district other than where the official resides, the warrant shall be directed to the marshal of the district in which the official resides and the marshal of the district in which the property is located.

§3542. Carrying out distress warrants

(a) A marshal carrying out a distress warrant issued under section 3541 of this title shall seize the personal property of the official and sell the property after giving 10 days notice of the sale. Notice shall be given by posting an advertisement of the property to be sold in at least 2 public places in the town and county in which the property was taken or the town and county in which the owner of the property resides. If the property does not satisfy the amount due under the warrant, the official may be sent to prison until discharged by law.

---

[7] P.L. 98-216, §1(4)(A), inserted "(1)".
[8] P.L. 98-216, §1(4)(B), struck out "(1)" and substituted "(A)".
[9] P.L. 98-216, §1(4)(C), struck out "(2)(A)" and substituted "(B)(i)".
[10] P.L. 98-216, §1(4)(D), struck out "(B)" and substituted "(ii)".
[11] P.L. 98-216, §1(4)(E), struck out "(C)" and substituted "(iii)".
[12] P.L. 98-216, §1(4)(F), added paragraph (2).

(b)(1) The amount due under a warrant is a lien on the real property of the official from the date the distress warrant is issued. The lien shall be recorded in the office of the clerk of the appropriate district court until discharged under law.

(2) If the personal property of the official is not enough to satisfy a distress warrant, the marshal shall sell real property of the official after advertising the property for at least 3 weeks in at least 3 public places in the county or district where the property is located. A buyer of the real property has valid title against all persons claiming under the official.

(c) The official shall receive that part of the proceeds of a sale remaining after the distress warrant is satisfied and the reasonable costs and charges of the sale are paid.

§3543. Postponing a distress warrant proceeding

(a) A distress warrant proceeding may be postponed for a reasonable time if the Secretary of the Treasury believes the public interest will not be harmed by the postponement.

(b)(1) A person adversely affected by a distress warrant issued under section 3541 of this title may bring a civil action in a district court of the United States. The complaint shall state the kind and extent of the harm. The court may grant an injunction to stay any part of a distress warrant proceeding required by the action after the person applying for the injunction gives a bond in an amount the court prescribes for carrying out a judgment.

(2) An injunction under this subsection does not affect a lien under section 3542(b)(1) of this title. The United States Government is not required to answer in a civil action brought under this subsection.

(3) If the court dissolves the injunction on a finding that the civil action for the injunction was brought only for delay, the court may increase the interest rate imposed on amounts found due against the complainant to not more than 10 percent a year. The judge may grant or dissolve an injunction under this subsection either in or out of court.

(c) A person adversely affected by a refusal to grant an injunction or by dissolving an injunction under subsection (b) of this section may petition a judge of a circuit court of appeals in which the district is located or the Supreme Court justice allotted to that circuit by giving the judge or justice a copy of the proceeding held before the district judge. The judge or justice may grant an injunction or allow an appeal if the judge or justice finds the case requires it.

§3544. Rights and remedies of the United States Government reserved

This subchapter does not affect a right or remedy the United States Government has by law to recover a tax, debt, or demand.

§3545. Civil action to recover money

The Attorney General shall bring a civil action to recover an amount due to the United States Government on settlement of the account of a person accountable for public money when the person neglects or refuses to pay the amount to the Treasury. Any commission of that person and interest of 6 percent a year from the time the money is received by the person until repaid to the Treasury shall be added to the amount due on the account. The commission is forfeited when judgment is obtained.

* * * * * * *

§3701. Definitions and application

(a) In this chapter—

(1) "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(2) "calendar quarter" means a 3-month period beginning on January 1, April 1, July 1, or October 1.

(3) "consumer reporting agency" means—

(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

(B) a person that, for money or on a cooperative basis, regularly—

(i) gets information on consumers to give the information to a consumer reporting agency; or

(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(4) "executive or legislative agency" means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(5) "military department" means the Departments of the Army, Navy, and Air Force.

(6) "system of records" has the same meaning given that term in section 552a(a)(5) of title 5.

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

(b) In subchapter II of this chapter, "claim" includes amounts owing on account of loans insured or guaranteed by the Government and other amounts due the Government.

(c) In sections 3716 and 3717 of this title, "person" does not include an agency of the United States Government, of a State government, or of a unit of general local government.

(d) Sections 3711(f) and 3716-3719 of this title do not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States.

§3702. Authority of the Comptroller General to settle claims

(a) Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government. A claim that was not administratively examined before submission to the Comptroller General shall be examined by 2 officers or employees of the General Accounting Office independently of each other.

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the Comptroller General within 6 years after the claim accrues except—

(A) as provided in this chapter or another law; or

(B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(2) When the claim of a member of the armed forces accrues during war or within 5 years before war begins, the claim must be presented to the Comptroller General within 5 years after peace is established or within the period provided in clause (1) of this subsection, whichever is later.

(3) The Comptroller General shall return a claim not received in the time required under this subsection with a copy of this subsection and no further communication is required.

(c) A claim on a check or warrant that the records of the Comptroller General or the Secretary of the Treasury show as being paid must be presented to the Comptroller General or the Secretary within 6 years after the check or warrant was issued.

(d) The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General.

SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

§3711. Collection and compromise

(a) The head of an executive or legislative agency—

(1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;

(2) may compromise a claim of the Government of not more than $20,000 (excluding interest) that has not been referred to another executive or legislative agency for further collection action; and

(3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.

(b) The Comptroller General has the same authority that the head of the agency has under subsection (a) of this section when the claim is referred to the Comptroller General for further collection action. Only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official.

(c)(1) The head of an executive or legislative agency may not act under subsection (a)(2) or (3) of this section on a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.

* * * * * * *

(d) A compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact. An accountable official is not liable for an amount paid or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this section.

(e) The head of an executive or legislative agency acts under—

(1) regulations prescribed by the head of the agency; and

(2) standards that the Attorney General and the Comptroller General may prescribe jointly.

(f)(1) When trying to collect a claim of the Government under a law except the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the head of an executive or legislative agency may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if—

(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency;

(B) the head of the agency has reviewed the claim and decided that the claim is valid and overdue;

(C) the head of the agency has notified the individual in writing—

(i) that payment of the claim is overdue;

(ii) that, within not less than 60 days after sending the notice, the head of the agency intends to disclose to a consumer reporting agency that the individual is responsible for the claim;

(iii) of the specific information to be disclosed to the consumer reporting agency; and

(iv) of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim;

(D) the individual has not—

(i) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the head of the agency has agreed to; or

(ii) filed for review of the claim under paragraph (2) of this subsection;

(E) the head of the agency has established procedures to—

(i) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(ii) verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed; and

(iii) get satisfactory assurances from each consumer reporting agency that the agency is complying with all laws of the United States related to providing consumer credit information; and

(F) the information disclosed to the consumer reporting agency is limited to—

(i) information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(ii) the amount, status, and history of the claim; and

(iii) the agency or program under which the claim arose.

(2) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection and at other times allowed by law, the head of an executive or legislative agency shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(3) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection, the head of an executive or legislative agency shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice under paragraph (1)(C).

§3712. Time limitations for presenting certain claims of the Government

(a) Except as provided in this subsection, the United States Government must bring a civil action to enforce the liability of an endorser, transferor, depositary, or fiscal agent on a forged or unauthorized signature or endorsement on, or a change in, a check or warrant issued by the Secretary of the Treasury, the United States Postal Service, or a disbursing official or agent within 6 years after the check or warrant is presented to the drawee of the check or warrant for payment unless, within that period, written notice of the claim is given to the endorser, transferor, depositary, or fiscal agent. The period for bringing a civil action orgiving notice is extended for 180 days if a claim is received under section 3702(c) of this title.

(b) Notwithstanding subsection (a) of this section, a civil action may be brought within 2 years after the claim is discovered when an endorser, transferor, depositary, or fiscal agent fraudulently conceals the claim from an officer or employee of the Government entitled to bring the civil action.

(c) The Comptroller General shall credit the appropriate account of the Treasury for the amount of a check or warrant for which a civil action cannot be brought because notice was not given within the time required under subsection (a) of this section if the failure to give notice was not the result of negligence of the Secretary.

(d) The Government waives all claims against a person arising from dual pay from the Government if the dual pay is not reported to the Comptroller General for collection within 6 years from the last date of a period of dual pay.

§3713. Priority of Government claims

(a)(1) A claim of the United States Government shall be paid first when—

(A) a person indebted to the Government is insolvent and—

(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

§3714. Keeping money due States in default

The Secretary of the Treasury shall keep the necessary amount of money the United States Government owes a State when the State defaults in paying principal or interest on investments in stocks or bonds the State issues or guarantees and that the Government holds in trust. The money shall be used to pay the principal or interest or reimburse, with interest, money the Government advanced for interest due on the stocks or bonds.

* * * * * * *

§3720. Collection of payments[13]

(a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency by the use of such procedures as withdrawals and deposits by electronic transfer of funds, automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established by subsection (c).

(c) There is established in the Treasury of the United States a revolving fund to be known as the "Cash Management Improvements Fund". Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

§3720A. Reduction of tax refund by amount of debt[14]

(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any OASDI overpayment and past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

---

[13] P.L. 98-369, §2652(a)(1), added §3720.

[14] P.L. 98-369, §2653(a)(1), added §3720A, applicable with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1988.

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable; and

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

(f) For purposes of this section—

(1) the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

(2) the term "past-due support" means any delinquency subject to section 464 of the Social Security Act; and

(3) the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act[15]

* * * * * * *

§3728. Setoff against judgment

(a) The Comptroller General shall withhold paying that part of a judgment against the United States Government presented to the Comptroller General that is equal to a debt the plaintiff owes the Government.

(b) The Comptroller General shall—

(1) discharge the debt if the plaintiff agrees to the setoff and discharges a part of the judgment equal to the debt; or

(2)(A) withhold payment of an additional amount the Comptroller General decides will cover legal costs of bringing a civil action for the debt if the plaintiff denies the debt or does not agree to the setoff; and

(B) have a civil action brought if one has not already been brought.

(c) If the Government loses a civil action to recover a debt or recovers less than the amount the Comptroller General withholds under this section, the Comptroller General shall pay the plaintiff the balance and interest of 6 percent for the time the money is withheld.

* * * * * * *

§3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary shall publish each rate in the Federal Register.

* * * * * * *

---

[15] As in original. No punctuation.

§6503. Transfer and deposit requirements

(a) Consistent with program purposes and regulations of the Secretary of the Treasury, the head of an executive agency carrying out a grant program shall schedule the transfer of grant money to minimize the time elapsing between transfer of the money from the Treasury and the disbursement by a State, whether disbursement occurs before or after the transfer. A State is not accountable for interest earned on grant money pending its disbursement for program purposes.

(b) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as United States Government grant money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing.

§6504. Use of existing State or multimember agency to administer grant programs

Notwithstanding a law of the United States providing that one State agency or multimember agency must be established or designated to carry out or supervise the administration of a grant program, the head of the executive agency carrying out the program may, when requested by the executive or legislative authority of the State responsible for the organizational structure of a State government—

(1) waive the one State agency or multimember agency provision on an adequate showing that the provision prevents the establishment of the most effective and efficient organizational arrangement within the State government; and

(2) approve another State administrative structure or arrangement after deciding that the objectives of the law authorizing the grant program will not be endangered by using another State structure or arrangement.

§6505. Authority to provide specialized or technical services

(a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when—

(1) written request is made by the State or local government; and

(2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.

(c) Payment received by an executive agency for providing services under this section shall be deposited to the credit of the principal appropriation from which the cost of providing the services has been paid or will be charged.

(d) The authority under this section is in addition to authority under another law in effect on October 16, 1968.

* * * * * * *

CHAPTER 75—REQUIREMENTS FOR SINGLE AUDITS[*]

Sec.
7501. Definitions.
7502. Audit requirements; exemptions.
7503. Relation to other audit requirements.
7504. Cognizant agency responsibilities.
7505. Regulations.
7506. Monitoring responsibilities of the Comptroller General.
7507. Effective date; report.

§7501. Definitions

As used in this chapter, the term—

(1) "cognizant agency" means a Federal agency which is assigned by the Director with the responsibility for implementing the requirements of this chapter with respect to a particular State or local government.

(2) "Comptroller General" means the Comptroller General of the United States.

---

[*] P.L. 98-502, §2, added chapter 75.

(3) "Director" means the Director of the Office of Management and Budget.

(4) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals.

(5) "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code.

(6) "generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(7) "generally accepted government auditing standards" means the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General.

(8) "independent auditor" means—

(A) an external State or local government auditor who meets the independence standards included in generally accepted government auditing standards, or

(B) a public accountant who meets such independence standards.

(9) "internal controls" means the plan of organization and methods and procedures adopted by management to ensure that—

(A) resource use is consistent with laws, regulations, and policies;

(B) resources are safeguarded against waste, loss, and misuse; and

(C) reliable data are obtained, maintained, and fairly disclosed in reports.

(10) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "local government" means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(12) "major Federal assistance program" means any program for which total expenditures of Federal financial assistance by the State or local government during the applicable year exceed—

(A) $20,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $7,000,000,000;

(B) $19,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $6,000,000,000 but are less than or equal to $7,000,000,000;

(C) $16,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $5,000,000,000 but are less than or equal to $6,000,000,000;

(D) $13,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $4,000,000,000 but are less than or equal to $5,000,000,000;

(E) $10,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $3,000,000,000 but are less than or equal to $4,000,000,000;

(F) $7,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $2,000,000,000 but are less than or equal to $3,000,000,000;

(G) $4,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $1,000,000,000 but are less than or equal to $2,000,000,000;

(H) $3,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $100,000,000 but are less than or equal to $1,000,000,000; and

(I) the larger of (i) $300,000, or (ii) 3 percent of such total expenditures for all programs, in the case of a State or local government for which such total expenditures for all programs exceed $100,000 but are less than or equal to $100,000,000.

(13) "public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(14) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the

Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe.

(15) "subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that receives such assistance.

§7502. Audit requirements; exemptions

(a)(1)(A) Each State and local government which receives a total amount of Federal financial assistance equal to or in excess of $100,000 in any fiscal year of such government shall have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title.

(B) Each State and local government that receives a total amount of Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 in any fiscal year of such government shall—

(i) have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title; or

(ii) comply with any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

(C) Each State and local government that receives a total amount of Federal financial assistance which is less than $25,000 in any fiscal year of such government shall be exempt for such fiscal year from compliance with—

(i) the audit requirements of this chapter; and

(ii) any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

The provisions of clause (ii) of this subparagraph do not exempt a State or local government from compliance with any provision of a Federal statute or regulation that requires such government to maintain records concerning Federal financial assistance provided to such government or that permits a Federal agency or the Comptroller General access to such records.

(2) For purposes of this section, a State or local government shall be considered to receive Federal financial assistance whether such assistance is received directly from a Federal agency or indirectly through another State or local government.

(b)(1) Except as provided in paragraphs (2) and (3), audits conducted pursuant to this chapter shall be conducted annually.

(2) If a State or local government is required—

(A) by constitution or statute, as in effect on the date of enactment of this chapter, or

(B) by administrative rules, regulations, guidelines, standards, or policies, as in effect on such date,

to conduct its audits less frequently than annually, the cognizant agency for such government shall, upon request of such government, permit the government to conduct its audits pursuant to this chapter biennially, except as provided in paragraph (3). Such audits shall cover both years within the biennial period.

(3) Any State or local government that is permitted, under clause (B) of paragraph (2), to conduct its audits pursuant to this chapter biennially by reason of the requirements of a rule, regulation, guideline, standard, or policy, shall, for any of its fiscal years beginning after December 31, 1986, conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes by January 1, 1987. Audits conducted biennially under the provisions of this paragraph shall cover both years within the biennial period.

(c) Each audit conducted pursuant to subsection (a) shall be conducted by an independent auditor in accordance with generally accepted government auditing standards, except that, for the purposes of this chapter, such standards shall not be construed to require economy and efficiency audits, program results audits, or program evaluations.

(d)(1) Each audit conducted pursuant to subsection (a) for any fiscal year shall cover the entire State or local government's operations except that, at the option of such government—

(A) such audit may, except as provided in paragraph (5), cover only each department, agency, or establishment which received, expended, or otherwise administered Federal financial assistance during such fiscal year; and

(B) such audit may exclude public hospitals and public colleges and universities.

(2) Each such audit shall encompass the entirety of the financial operations of such government or of such department, agency, or establishment, whichever is applicable, and shall determine and report whether—

(A)(i) the financial statements of the government, department, agency, or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles; and

(ii) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon the financial statements;

(B) the government, department, agency, or establishment has internal control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(C) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

In complying with the requirements of subparagraph (C), the independent auditor shall select and test a representative number of transactions from each major Federal assistance program.

(3) Transactions selected from Federal assistance programs, other than major Federal assistance programs, pursuant to the requirements of paragraphs (2)(A) and (2)(B) shall be tested for compliance with Federal laws and regulations that apply to such transactions. Any noncompliance found in such transactions by the independent auditor in making determinations required by this paragraph shall be reported.

(4) The number of transactions selected and tested under paragraphs (2) and (3), the selection and testing of such transactions, and the determinations required by such paragraphs shall be based on the professional judgment of the independent auditor.

(5) Each State or local government which, in any fiscal year of such government, receives directly from the Department of the Treasury a total of $25,000 or more under chapter 67 of this title (relating to general revenue sharing) and which is required to conduct an audit pursuant to this chapter for such fiscal year shall not have the option provided by paragraph (1)(A) for such fiscal year.

(6) A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered to be an audit for the purpose of this chapter.

(e)(1) Each State and local government subject to the audit requirements of this chapter, which receives Federal financial assistance and provides $25,000 or more of such assistance in any fiscal year to a subrecipient, shall—

(A) if the subrecipient conducts an audit in accordance with the requirements of this chapter, review such audit and ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government; or

(B) if the subrecipient does not conduct an audit in accordance with the requirements of this chapter—

(i) determine whether the expenditures of Federal financial assistance provided to the subrecipient by the State or local government are in accordance with applicable laws and regulations; and

(ii) ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government.

(2) Each such State and local government shall require each subrecipient of Federal assistance through such government to permit, as a condition of receiving funds from such assistance, the independent auditor of the State or local government to have such access to the subrecipient's records and financial statements as may be necessary for the State or local government to comply with this chapter.

(f) The report made on any audit conducted pursuant to this section shall, within thirty days after completion of such report, be transmitted to the appropriate Federal officials and made available by the State or local government for public inspection.

(g) If an audit conducted pursuant to this section finds any material noncompliance with applicable laws and regulations by, or material weakness in the internal controls of, the State or local government with respect to the matters described in subsection (d)(2), the State or local government shall submit to appropriate Federal officials a plan for corrective action to eliminate such material noncompliance or weakness or a statement describing the reasons that corrective action is not necessary. Such plan shall be consistent with the audit resolution standard promulgated by the Comptroller General (as part of the standards for internal controls in the Federal Government) pursuant to section 3512(b) of this title.

§7503. Relation to other audit requirements

(a) An audit conducted in accordance with this chapter shall be in lieu of any financial or financial and compliance audit of an individual Federal assistance program which a State or local government is required to conduct under any other Federal law or regulation. To the extend[17] that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal law or regulation, a Federal agency shall rely upon and use that information and plan and conduct its own audits accordingly in order to avoid a duplication of effort.

(b) Notwithstanding subsection (a), a Federal agency shall conduct any additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, such agency from carrying out such additional audits.

(c) The provisions of this chapter do not limit the authority of Federal agencies to conduct, or enter into contracts for the conduct of, audits and evaluations of Federal financial assistance programs, nor limit the authority of any Federal agency Inspector General or other Federal audit official.

(d) Subsection (a) shall apply to a State or local government which conducts an audit in accordance with this chapter even though it is not required by section 7502(a) to conduct such audit.

(e) A Federal agency that performs or contracts for audits in addition to the audits conducted by recipients pursuant to this chapter shall, consistent with other applicable law, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§7504. Cognizant agency responsibilities

(a) The Director shall designate cognizant agencies for audits conducted pursuant to this chapter.

(b) A cognizant agency shall—

(1) ensure that audits are made in a timely manner and in accordance with the requirements of this chapter;

(2) ensure that the audit reports and corrective action plans made pursuant to section 7502 of this title are transmitted to the appropriate Federal officials; and

(3)(A) coordinate, to the extent practicable, audits done by or under contract with Federal agencies that are in addition to the audits conducted pursuant to this chapter; and (B) ensure that such additional audits build upon the audits conducted pursuant to this chapter.

§7505. Regulations

(a) The Director, after consultation with the Comptroller General and appropriate Federal, State, and local government officials, shall prescribe policies, procedures, and guidelines to implement this chapter. Each Federal agency shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such policies, procedures, and guidelines.

(b)(1) The policies, procedures, and guidelines prescribed pursuant to subsection (a) shall include criteria for determining the appropriate charges to programs of Federal financial assistance for the cost of audits. Such criteria shall prohibit a State or local government which is required to conduct an audit pursuant to this chapter from charging to any such program (A) the cost of any financial or financial and compliance audit which is not conducted in accordance with this chapter, and (B) more than a reasonably proportionate share of the cost of any such audit that is conducted in accordance with this chapter.

(2) The criteria prescribed pursuant to paragraph (1) shall not, in the absence of documentation demonstrating a higher actual cost, permit (A) the ratio of (i) the total charges by a government to Federal financial assistance programs for the cost of audits performed pursuant to this chapter, to (ii) the total cost of such audits, to exceed (B) the ratio of (i) total Federal financial assistance expended by such government during the applicable fiscal year or years, to (ii) such government's total expenditures during such fiscal year or years.

(c) Such policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals will have the opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter.

---

[17] As in original. Possibly should be "extent".

§7506. Monitoring responsibilities of the Comptroller General

The Comptroller General shall review provisions requiring financial or financial and compliance audits of recipients of Federal assistance that are contained in bills and resolutions reported by the committees of the Senate and the House of Representatives. If the Comptroller General determines that a bill or resolution contains provisions that are inconsistent with the requirements of this chapter, the Comptroller General shall, at the earliest practicable date, notify in writing—

(1) the committee that reported such bill or resolution; and

(2)(A) the Committee on Governmental Affairs of the Senate (in the case of a bill or resolution reported by a committee of the Senate); or

(B) the Committee on Government Operations of the House of Representatives (in the case of a bill or resolution reported by a committee of the House of Representatives).

§7507. Effective date; report

(a) This chapter shall apply to any State or local government with respect to any of its fiscal years which begin after December 31, 1984.

(b) The Director, on or before May 1, 1987, and annually thereafter, shall submit to each House of Congress a report on operations under this chapter. Each such report shall specifically identify each Federal agency or State or local government which is failing to comply with this chapter.

* * * * * * *

§9309. Priority of sureties

When a person required to provide a surety bond given to the United States Government is insolvent or dies having assets insufficient to pay debts, the surety, or the executor, administrator, or assignee of the surety paying the Government the amount due under the bond—

(1) has the same priority to amounts from the assets and estate of the person as are secured for the Government; and

(2) personally may bring a civil action under the bond to recover amounts paid under the bond.

* * * * * * *

§9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

§9702. Investment of trust funds

Except as required by a treaty of the United States, amounts held in trust by the United States Government (including annual interest earned on the amounts)—

(1) shall be invested in Government obligations; and

(2) shall earn interest at an annual rate of at least 5 percent.

[*Internal References.*—Social Security Act §409(a)(4)(A) cites §1342 of title 31; §§201(d), 904(b)(end), 1817(c), and 1841(c) cite chapter 31; §§1816(c)(2)(C) and 1842(c)(2)(C) cite §3902(a); §§2002(b) and 2006(c) cite §6503; §503(a) cites §6503(a); and §506(d)(3) cites §6503(b) of this title. Social Security Act titles I, II, IV, VII, IX, X, XIV, XVI (State), XVI (SSI), XIX, and XX and §§202(t)(4)(end) and (t)(10), and 1816(h) have footnotes referring to title 31.**]**

TITLE 32, UNITED STATES CODE

NATIONAL GUARD

* * * * * * *

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

* * * * * * *

§709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in—

(1) the administration and training of the National Guard; and

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.

(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(5) a right of appeal which may exist with respect to clause (1), (2), (3), or (4) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

(f) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to any person employed under this section.

(g)(1) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5.

(2) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) In no event shall the number of technicians employed under this section at any one time exceed 53,100.

* * * * * * *

[*Internal Reference.*—Social Security Act §218(b)(5) cites §709 of title 32.]

TITLE 37, UNITED STATES CODE

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 1—DEFINITIONS

§101. Definitions

In addition to the definitions in sections 1-5 of title 1, for the purposes of this title—

* * * * * * *

(3) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service;

* * * * * * *

(5) "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy;

(E) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(F) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service;

* * * * * * *

CHAPTER 3—BASIC PAY

§201. Pay grades: assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following pay grades:

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and National Oceanic and Atmospheric Administration	Public Health Service
0-10	General	Admiral	
0-9	Lieutenant general.	Vice admiral	Surgeon General.
0-8	Major general	Rear admiral[1]	Deputy Surgeon General. Assistant Surgeon General having rank of major general.

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and National Oceanic and Atmospheric Administration	Public Health Service
0-7	Brigadier general	Rear admiral (lower half)[2]	Assistant Surgeon General having rank of brigadier general.
0-6	Colonel	Captain	Director grade.
0-5	Lieutenant colonel.	Commander	Senior grade.
0-4	Major	Lieutenant commander	Full grade.
0-3	Captain	Lieutenant	Senior assistant grade.
0-2	1st lieutenant	Lieutenant (junior grade)	Assistant grade.
0-1	2d lieutenant	Ensign	Junior assistant grade.

[1] P.L. 98-557, §25(b)(1), struck out "(Navy) and Rear admiral (upper half) (Coast Guard and National Oceanic and Atmospheric Administration)".

[2] P.L. 98-557, §25(b)(1), struck out "(Navy) and Rear admiral (lower half) and commodore (Coast Guard and National Oceanic and Atmospheric Administration)".

P.L. 99-145, §514(d)(1), struck out "Commodore" and substituted "Rear admiral (lower half)".

(b)[1] For the purpose of computing their basic pay, warrant officers of the armed forces are assigned, by the warrant officer grade in which serving, to the following pay grades:

Pay Grade	Warrant Officer Grade
W-4	Chief Warrant Officer, W-4
W-3	Chief Warrant Officer, W-3
W-2	Chief Warrant Officer, W-2
W-1	Warrant Officer, W-1

(c)[2] An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the rate of 50 percent of the basic pay of a commissioned officer in pay grade 0-1 with two or less years of service computed under section 205 of this title.

(d)[3] Unless he is entitled to the basic pay of a higher pay grade, an aviation pilot of the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve is entitled to monthly basic pay at the rate prescribed for pay grade E-5.

(e)[4] Except as provided by subsections (c) and (d)[5] of this section, enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title, an enlisted member may not be placed in pay grade E-8 or E-9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

* * * * * * *

§203. Rates

(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law[6].

(b) While serving as a permanent professor at the United States Military Academy or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of $250 a month. This additional pay may not be used in the computation of retired pay.

(c)(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the rate of $494.40[7].

(2) The rate of monthly cadet pay, or midshipman pay, under this subsection shall be adjusted in the manner and at the time the monthly basic pay of members of the uniformed services is adjusted under section 1009 of this title.

---

[1] P.L. 98-94, §932(d)(1), struck out the former subsection (b).

P.L. 98-94, §932(d)(2), redesignated subsection (c) as subsection (b).

[2] P.L. 98-94, §932(d)(2), redesignated subsection (d) as subsection (c).

[3] P.L. 98-94, §932(d)(2), redesignated subsection (e) as subsection (d).

[4] P.L. 98-94, §932(d)(2), redesignated subsection (f) as subsection (e).

[5] P.L. 98-94, §932(d)(3), struck out "(d) and (e)" and substituted "(c) and (d)".

[6] P.L. 99-145, §1303(b)(1), inserted "or as otherwise prescribed by law".

[7] P.L. 99-661, §601(c), struck out "$461.40" and substituted "$494.40".

(d) The basic pay of a commissioned officer who is in pay grade 0-1, 0-2, or 0-3 and who is credited with a total of over four years' active service as a warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.[8]

§204. Entitlement

(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 3021[9], 3496, 3541, 8021[10], 8496, or 8541 of title 10, or section 503, 504, 505, or 506 of title 32.

(b) For the purposes of subsection (a) of this section, under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty.

(c) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date when he appears at the place of company rendezvous. However, this subsection does not authorize any expenditure before arriving at the place of rendezvous that is not authorized by law to be paid after arrival at that place.

(d) Full-time training, training duty with pay, or other full-time duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his return home incident to that release may be paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade 0-1 beginning upon the date of his graduation.

(g) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member—

(1) is called or ordered to active duty for a period of more than 30 days; and

(2) is physically disabled in line of duty from injury, illness, or disease.[11]

(h)(1) A member of a reserve component of a uniformed service is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of income from non-military compensation as a result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty for a period of 30 days or less;

(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service); or

(C) while traveling directly to or from that duty or training.

(2)(A) Subject to subparagraphs (B) and (C), pay and allowances paid under paragraph (1) shall be in an amount which offsets the loss of income from non-military compensation.

---

[8] P.L. 98-94, §902(a), amended subsection (d) in its entirety.
[9] P.L. 99-433, §531(b), struck out "3033" and substituted "3021".
[10] P.L. 99-433, §531(b), struck out "8033" and substituted "8021".
[11] P.L. 99-661, §604(b)(1), amended subsection (g) in its entirety.

(B) Pay and allowances may not be paid under paragraph (1) to a member who is enrolled in any other income protection insurance plan to the extent that such payment would result in total benefits to the member of more than the demonstrated loss of income from non-military compensation.

(C) The total amount of pay and allowances paid under paragraph (1) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

(3) Pay and allowances may be paid under paragraph (1)—

(A) for a period of not more than six months; or

(B) for a longer period, if the Secretary concerned determines that it is in the interests of fairness and equity to do so.

(4) A member is not entitled to benefits under this subsection if the injury, illness, disease, or aggravation of an injury, illness, or disease described in paragraph (1)(C) is the result of the gross misconduct of the member.

(5) Regulations with respect to procedures for paying pay and allowances under paragraph (1) shall be prescribed—

(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.[12]

(i)[13] A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or a monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.[14]

§205. Computation: service creditable

(a) Subject to subsections (b) and (c) of this section, for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;
(B) the Regular Army Reserve;
(C) the Organized Militia before July 1, 1916;
(D) the National Guard;
(E) the National Guard Reserve;
(F) a reserve component of a uniformed service;
(G) the Naval Militia;
(H) the National Naval Volunteers;
(I) the Naval Reserve Force;
(J) the Army without specification of component;
(K) the Air Force without specification of component;
(L) the Marine Corps Reserve Force;
(M) the Philippine Scouts; or
(N) the Phillippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them.

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

---

[12] P.L. 99-661, §604(b)(1), amended subsection (h) in its entirety.

[13] P.L. 99-661, §604(b)(2), repealed the former subsection (i) and §604(b)(3), redesignated subsection (j) as subsection (i).

[14] P.L. 98-94, §1012(b), added subsection (j).

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Veterans' Administration, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) of this subsection and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10, a period of service described in clauses (2) through (7) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration includes periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration or the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a) of this section.

(c) The periods of service authorized to be counted under subsection (a) of this section shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after October 13, 1964, that he performed concurrently as a member of a uniformed service and as a member of the Senior Reserve Officers' Training Corps.

(e) Notwithstanding subsection (a) of this section, a period served by a member of a uniformed service in a reserve component under an enlistment under section 511 of title 10 before the member—

(1) begins service on active duty under subsection (b) of that section, or

(2) begins an initial period of active duty for training under subsection (d) of that section,

may not be counted under this section.[15]

* * * * * * *

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

§701. Members of Army, Navy, Air Force, and Marine Corps; contract surgeons

(a) Under regulations prescribed by the Secretary of the military department concerned[16], a commissioned officer of the Army, Navy, Air Force, or Marine Corps[17] may transfer or assign his pay account, when due and payable.

(b) A contract surgeon, or contract dental surgeon, of the Army, Navy, or Air Force[18], on duty in Alaska, Hawaii, the Philippine Islands, or Puerto Rico, may transfer or assign his pay account, when due and payable, under the regulations prescribed under section[19] (a) of this section.

(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps[20] may not assign his pay, and if he does so, the assignment is void.

(d) The Secretary of the military department concerned[21], may allow a—

(1) member of the Army, Navy, Air Force, or Marine Corps[22]; or

(2) contract surgeon of the Army, Navy, or Air Force[23];

to make allotments from his pay for the support of his relatives, or for any other purpose that the Secretary concerned considers proper. If an allotment made under this subsection is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned, from the officer who failed to make the report.

[§702. Repealed.[24]]

---

[15] P.L. 98-525, §607(a), added subsection (e).

[16] P.L. 99-145, §683(a)(1)(C), struck out "Army or the Secretary of the Air Force, as the case may be" and substituted "military department concerned".

[17] P.L. 99-145, §683(a)(1)(A), struck out "or the Air Force" and substituted ", Navy, Air Force, or Marine Corps".

[18] P.L. 99-145, §683(a)(1)(B), struck out "or the Air Force" and substituted ", Navy, or Air Force".

[19] As in original. Should be "subsection".

[20] See footnote 17.

[21] See footnote 16.

[22] See footnote 17.

[23] See footnote 18.

[24] P.L. 99-145, §683(b)(1), repealed §702.

§703. Allotments: members of Coast Guard

Members of the Coast Guard may, under regulations prescribed by the Secretary of Transportation, make allotments from their pay and allowances.

§704. Allotments: officers of Public Health Service

Commissioned officers of the Public Health Service who are on active duty may, under regulations prescribed by the President, make allotments from their pay.

[§705. Repealed.[25]]

§706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration

Under regulations prescribed by the Secretary of Commerce, commissioned officers of the National Oceanic and Atmospheric Administration may make allotments or assignments of their pay.

* * * * * * *

§1009. Adjustments of compensation

(a) Whenever the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5 is adjusted upward, the President shall immediately make an upward adjustment in the—

(1) monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(2) basic allowance for subsistence authorized enlisted members and officers by section 402 of this title; and

(3) basic allowance for quarters authorized members of the uniformed services by section 403(a) of this title.

(b) An adjustment under this section shall have the force and effect of law and shall—

(1) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees;

(2) be based on the rates of the various elements of compensation as defined in, or made under, section 402 or 403 of this title or this section; and

(3) subject to subsections (c) and (d) of this section, provide all eligible members with an increase in each element of compensation, set forth in subsection (a) of this section, which is of the same percentage as the overall average percentage increase in the General Schedule rates of basic pay for civilian employees.

(c)(1) Whenever the President determines such action to be in the best interest of the Government, he is authorized to allocate the overall average percentage of any increase described in subsection (b)(3) of this section among the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis; however, the amount allocated to the element of monthly basic pay may not be less than 75 percent of the amount that would have been allocated to the element of basic pay under subsection (b)(3) of this section.

(2) Under regulations prescribed by the President, whenever the President exercises his authority under paragraph (1) of this subsection to allocate the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403(b) or (c) of this title, is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under paragraph (1) of this subsection in the amount of the basic allowance for quarters which, but for section 403(b) or (c) of this title, such member would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) of this section if the President had not exercised such authority.

(d)(1) Subject to paragraph (2) of this subsection, whenever the President determines such action to be in the best interest of the Government, he may allocate the overall percentage increase in the element of basic pay that would otherwise be effective after any allocation made under subsection (c) of this section among such pay grade and years-of-service categories as he considers appropriate.

(2) In making any allocation of an overall percentage increase in basic pay under paragraph (1) of this subsection—

(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection or under subsection (c) of this section (or under both such subsections) may not be less than 75 percent of the amount of the increase in the element of basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (b)(3) of this section; and

---

[25] P.L. 99-145, §638(b)(1), repealed §705.

(B) the overall percentage increase in the elements of compensation specified in subsection (a) of this section in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

(e) Whenever the President plans to exercise his authority under subsection (c) or (d) of this section with respect to any anticipated increase in the compensation of members of the uniformed services, he shall advise the Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

(f) The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title, and a full report shall be made to the Congress summarizing the objectives and results of those allocations.

* * * * * * *

[*Internal References.*—Social Security Act §209(end) cites chapter 3 and §1009 of title 37; §465(a)(1) cites §101(3) and chapter 13 of title 37; and §§465(a)(2)(A) and (c) cite §101(5) of title 37.]

EXECUTIVE ORDER NO. 12540

Federal Register, January 7, 1986 [51 FR 577]

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

Part I—Monthly Basic Pay

(Years of service computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
0-10[1]	$5221.50	$5405.40	$5405.40	$5405.40	$5405.40	$5612.70	$5612.70
0-9	4627.80	4749.00	4850.10	4850.10	4850.10	4973.40	4973.40
0-8	4191.60	4317.00	4419.60	4419.60	4419.60	4749.00	4749.00
0-7	3483.00	3719.70	3719.70	3719.70	3886.20	3886.20	4111.80
0-6	2581.50	2836.20	3021.90	3021.90	3021.90	3021.90	3021.90
0-5	2064.60	2424.60	2592.00	2592.00	2592.00	2592.00	2670.60
0-4	1740.30	2119.20	2260.50	2260.50	2302.50	2404.20	2568.00
0-3[2]	1617.30	1808.10	1932.90	2138.70	2241.00	2321.70	2447.10
0-2[2]	1410.30	1540.20	1850.10	1912.50	1952.70	1952.70	1952.70
0-1[2]	1224.30	1274.70	1540.20	1540.20	1540.20	1540.20	1540.20

Pay Grade	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-10[1]	$6042.30*	$6042.30*	$6474.60*	$6474.60*	$6907.80*	$6907.80*	$7338.30*
0-9	5180.40	5180.40	5612.70	5612.70	6042.30*	6042.30*	6474.60*
0-8	4973.40	4973.40	5180.40	5405.40	5612.70	5837.70*	5837.70*
0-7	4111.80	4317.00	4749.00	5075.40	5075.40	5075.40	5075.40
0-6	3021.90	3124.50	3618.60	3803.70	3886.20	4111.80	4459.50
0-5	2814.00	3002.70	3227.10	3412.50	3515.70	3638.40	3638.40
0-4	2712.60	2836.20	2960.70	3042.60	3042.60	3042.60	3042.60
0-3[2]	2568.00	2631.30	2631.30	2631.30	2631.30	2631.30	2631.30
0-2[2]	1952.70	1952.70	1952.70	1952.70	1952.70	1952.70	1952.70
0-1[2]	1540.20	1540.20	1540.20	1540.20	1540.20	1540.20	1540.20

[1] While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,097.00* regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or as warrant officers.

*Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,724.90 per month.

Commissioned Officers credited with over 4 years' active duty as an enlisted member and/or warrant officer

Pay Grade	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14
0-3	$2138.70	$2241.00	$2321.70	$2447.10	$2568.00	$2670.60
0-2	1912.50	1952.70	2014.50	2119.20	2200.20	2260.50
0-1	1540.20	1645.20	1705.80	1767.60	1829.10	1912.50

	Over 16	Over 18	Over 20	Over 22	Over 26
0-3	$2670.60	$2670.60	$2670.60	$2670.60	$2670.60
0-2	2260.50	2260.50	2260.50	2260.50	2260.50
0-1	1912.50	1912.50	1912.50	1912.50	1912.50

Warrant Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
W-4	$1647.60	$1767.60	$1767.60	$1808.10	$1890.30	$1973.70	$2056.50
W-3	1497.30	1624.50	1624.50	1645.20	1664.70	1786.20	1890.30
W-2	1311.60	1419.00	1419.00	1460.40	1540.20	1624.50	1686.00
W-1	1092.90	1253.10	1253.10	1357.50	1419.00	1479.90	1540.20

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
W-4	$2200.20	$2302.50	$2383.20	$2447.10	$2526.00	$2610.60	$2814.00
W-3	1952.70	2014.50	2074.50	2138.70	2221.80	2302.50	2383.20
W-2	1747.80	1808.10	1871.40	1932.90	1994.10	2074.50	2074.50
W-1	1604.10	1664.70	1726.20	1786.20	1850.10	1850.10	1850.10

Enlisted Members

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E-9[1]							$1916.40
E-8						$1607.40	1653.30
E-7	$1122.30	$1211.40	$1256.40	$1300.20	$1344.90	1387.50	1431.90
E-6	965.40	1052.40	1096.20	1143.00	1185.30	1228.50	1273.80
E-5	847.20	922.50	966.90	1009.20	1075.20	1119.00	1163.70
E-4	790.50	834.60	883.50	952.20	989.70	989.70	989.70
E-3	744.60	785.10	816.90	849.30	849.30	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40	716.40	716.40
E-1[2]	639.00	639.00	639.00	639.00	639.00	639.00	639.00
E-1[3]	590.70	590.70	590.70	590.70	590.70	590.70	590.70

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E-9[1]	$1959.90	$2004.30	$2050.20	$2095.80	$2136.60	$2249.10	$2467.80
E-8	1696.50	1740.90	1786.50	1827.90	1872.90	1983.00	2204.10
E-7	1476.30	1543.20	1587.00	1631.40	1652.70	1763.70	1983.00
E-6	1339.20	1381.20	1425.60	1447.50	1447.50	1447.50	1447.50
E-5	1206.30	1228.50	1228.50	1228.50	1228.50	1228.50	1228.50
E-4	989.70	989.70	989.70	989.70	989.70	989.70	989.70
E-3	849.30	849.30	849.30	849.30	849.30	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40	716.40	716.40
E-1[2]	639.00	639.00	639.00	639.00	639.00	639.00	639.00
E-1[3]	590.70	590.70	590.70	590.70	590.70	590.70	590.70

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2999.40 regardless of cumulative years of service, computed under section 205 of title 37, United States Code.

[2] Applies to personnel who have served 4 months or more on active duty.

[3] Applies to personnel who have served less than 4 months on active duty.

TITLE 38—UNITED STATES CODE[1]

VETERANS' BENEFITS

Table of Contents[2]

CHAPTER 1—GENERAL

Page
Sec. 101. Definitions 196

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

Sec. 603. Contracts for hospital care and medical services in non-Veterans' Administration facilities 197
Sec. 613. Medical care for survivors and dependents of certain veterans 198

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

Sec. 2001. Definitions 199
Sec. 2002. Purpose 199
Sec. 2002A. Assistant Secretary of Labor for veterans' employment 199
Sec. 2003. State and assistant State directors for veterans' employment 200
Sec. 2003A. Disabled veterans' outreach program 201
Sec. 2004. Employees of local offices 202
Sec. 2005. Cooperation of Federal agencies 202
Sec. 2006. Estimate of funds for administration; authorization of appropriations 202
Sec. 2007. Administrative controls; annual report 203
Sec. 2008. Cooperation and coordination with the Veterans' Administration 203
Sec. 2009. National veterans' employment and training programs 203
Sec. 2010. Secretary of Labor's committee on veterans' employment 204

CHAPTER 42—EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS

Sec. 2011. Definitions 204
Sec. 2012. Veterans' employment emphasis under Federal contracts 205
Sec. 2013. Eligibility requirements for veterans under Federal employment and training programs 205
Sec. 2014. Employment within the Federal Government 205

CHAPTER 43—VETERANS' REEMPLOYMENT RIGHTS

Sec. 2021. Right to reemployment of inducted persons; benefits protected 207
Sec. 2022. Enforcement procedures 208
Sec. 2023. Reemployment by the United States, territory, possession, or the District of Columbia 208
Sec. 2024. Rights of persons who enlist or are called to active duty; Reserves 209
Sec. 2025. Assistance in obtaining reemployment 211
Sec. 2026. Prior rights for reemployment 211

---

[1] This title was enacted by P.L. 85-857, approved September 2, 1958; 72 Stat. 1105. See P.L. 95-202, §401, with respect to Women's Air Forces Service Pilots, in Vol. II, p. 597.

[2] This table of contents does not appear in the U.S. Code.

Page

CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

Sec. 3005. Joint applications for social security and dependency and indemnity compensation 211
Sec. 3006. Furnishing of information by other agencies 212

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec. 3101. Nonassignability and exempt status of benefits 212
Sec. 3103A. Minimum active-duty service requirement 213
Sec. 3112. Annual adjustment of certain benefit rates 214

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES, PROCUREMENT AND SUPPLY

Sec. 5053. Specialized medical resources 215
Sec. 5056. Coordination with health services development activities carried out under the National Health Planning and Resources Development Act of 1974 216

CHAPTER 1—GENERAL

§101. Definitions

For the purposes of this title—

* * * * * * *

(21) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (a) while on transfer to one of the Armed Forces, or (b) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (c) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army[3] National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of field training or a practice cruise under chapter 103 of title 10; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

---

[3] P.L. 99-576, §702(1)(A), inserted "Army".

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

In the case of a member of the Army[4] National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

* * * * * * *

(27) The term "reserve component" means, with respect to the Armed Forces—
  (A) the Army Reserve;
  (B) the Naval Reserve;
  (C) the Marine Corps Reserve;
  (D) the Air Force Reserve;
  (E) the Coast Guard Reserve;
  (F) the Army[5] National Guard of the United States; and
  (G) the Air National Guard of the United States.

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * * * *

§603. Contracts for hospital care and medical services in non-Veterans' Administration facilities[6]

(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish—

(1) hospital care or medical services to a veteran for the treatment of—

(A) a service-connected disability; or

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service;

(2) medical services for the treatment of any disability of—

(A) a veteran described in section 612(a)(1)(B) of this title;

(B) a veteran described in section 612(f)(1)(A)(ii) of this title; or

(C) a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities;

(3) hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Veterans' Administration facility until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility;

(4) hospital care for women veterans;

(5) hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State (other than the Commonwealth of Puerto Rico)[7] not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and non-Veterans' Administration facilities in each such nonconti-

---

[4] See footnote 3.

[5] See footnote 3.

[6] P.L. 99-272, §19012(b), added §603.

[7] P.L. 99-166, §102(b)(1)(A) ⟦as amended by P.L. 99-272, §19012(c)(5)⟧, inserted "(other than the Commonwealth of Puerto Rico)".

guous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Veterans' Administration within the 48 contiguous States and the Commonwealth of Puerto Rico[8]; but the authority of the Administrator under this paragraph with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico of the restrictions in this paragraph with respect to hospital patient loads and the incidence of the furnishing of medical services;

(6) diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Veterans' Administration out-patient[9] clinics to obviate the need for hospital admission; or

(7) outpatient dental services and treatment, and related dental appliances, for a veteran described in section 612(b)(1)(G) of this title.

(b) In the case of any veteran for whom the Administrator contracts to furnish care or services in a non-Veterans' Administration facility pursuant to a provision of subsection (a) of this section, the Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.

* * * * * * *

§613. Medical care for survivors and dependents of certain veterans

(a) The Administrator is authorized to provide medical care, in accordance with the provisions of subsection (b) of this section, for—

(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability,

(2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and

(3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct,

who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS).

(b) In order to accomplish the purposes of subsection (a) of this section, the Administrator shall provide for medical care in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under chapter 55 of title 10 (CHAMPUS), by—

(1) entering into an agreement with the Secretary of Defense under which the Secretary shall include coverage for such medical care under the contract, or contracts, the Secretary enters into to carry out such chapter 55, and under which the Administrator shall fully reimburse the Secretary for all costs and expenditures made for the purposes of affording the medical care authorized pursuant to this section; or

(2) contracting in accordance with such regulations as the Administrator shall prescribe for such insurance, medical service, or health plans as the Administrator deems appropriate.

In cases in which Veterans' Administration medical facilities are equipped to provide the care and treatment, the Administrator is also authorized to carry out such purposes through the use of such facilities not being utilized for the care of eligible veterans.

(c) For the purposes of this section, a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution approved under chapter 36 of this title, and (3) who, while pursuing such course of instruction, incurs a disabling illness or injury (including a disabling illness or injury incurred between terms, semesters, or quarters or during a vacation or holiday period) which is not the result of such child's own willful misconduct and which results in such child's inability to continue or resume such child's chosen program of education at an approved educational institution shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first.

---

[8] P.L. 99-166, §102(b)(1)(B) [as amended by P.L. 99-272, §19012(c)(5)], struck out ", but the authority of the Administrator under this paragraph with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico of the restrictions in this paragraph with respect to hospital patient loads and the incidence of the furnishing of medical services" and substituted "and the Commonwealth of Puerto Rico".

[9] As in original.

(d) Notwithstanding the second sentence of section 1086(c) of title 10 or any other provision of law, any spouse, surviving spouse, or child who, after losing eligibility for medical care under this section by virtue of becoming entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), has exhausted any such benefits shall become eligible for medical care under this section and shall not thereafter lose such eligibility under this section by virtue of becoming again eligible for such hospital insurance benefits.

* * * * * * *

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

* * * * * * *

§2001. Definitions

For the purposes of this chapter—

(1) The term "special disabled veteran" has the same meaning provided in section 2011(1) of this title.

(2) The term "veteran of the Vietnam era" has the same meaning provided in section 2011(2) of this title.

(3) The term "disabled veteran" has the same meaning provided in section 2011(3) of this title.

(4) The term "eligible veteran" has the same meaning provided in section 2011(4) of this title.

(5) The term "eligible person" means—

(A) the spouse of any person who died of a service-connected disability,

(B) the spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power, or

(C) the spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

(6) The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and may include, to the extent determined necessary and feasible, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§2002. Purpose

The Congress declares as its intent and purpose that there shall be an effective (1) job and job training counseling service program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons and that, to this end policies and regulations shall be promulgated and administered by an[10] Assistant Secretary of Labor for Veterans' Employment, established by section 2002A of this title, through a Veterans Employment Service within the Department of Labor, so as to provide such veterans and persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

§2002A. Assistant Secretary of Labor for veterans' employment

There is established within the Department of Labor an[11] Assistant Secretary of Labor for Veterans' Employment, appointed by the President by and with the advice and consent of the Senate, who shall be the principal advisor to the Secretary of Labor with respect to the formulation and implementation of all departmental policies and procedures to carry out (1) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (2) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans. The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans' Employment.

---

[10] P.L. 98-160, §702(15), struck out "a" and substituted "an".

[11] See footnote 10.

§2003. State and Assistant State Directors for Veterans' Employment

(a) The Secretary of Labor shall assign to each State a representative of the Veterans' Employment Service to serve as the State Director for Veterans' Employment, and shall assign full-time Federal clerical support to each such Director. The Secretary shall also assign to each State one Assistant State Director for Veterans' Employment per each 250,000 veterans and eligible persons of the State veterans population and such additional Assistant State Directors for Veterans' Employment as the Secretary shall determine, based on the data collected pursuant to section 2007 of this title, to be necessary to assist the State Director for Veterans' Employment to carry out effectively in that State the purposes of this chapter. Full-time Federal clerical support personnel assigned to State Directors for Veterans' Employment shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(b)(1) Each State Director for Veterans' Employment and Assistant State Director for Veterans' Employment (A) shall be an eligible veteran who at the time of appointment has been a bona fide resident of the State for at least two years, and (B) shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(2) Each State Director for Veterans' Employment and Assistant State Director for Veterans' Employment shall be attached to the public employment service system of the State to which they are assigned. They shall be administratively responsible to the Secretary of Labor for the execution of the veterans' and eligible persons' counseling and placement policies of the Secretary through the public employment service system and in cooperation with other employment and training programs administered by the Secretary, by grantees of Federal or federally funded employment and training programs in the State, or directly by the State.

(c) In cooperation with the staff of the public employment service system and the staffs of each such other program in the State, the State Director for Veterans' Employment and Assistant State Directors for Veterans' Employment shall—

(1) be functionally responsible for the supervision of the registration of eligible veterans and eligible persons in local employment offices for suitable types of employment and training and for counseling and placement of eligible veterans and eligible persons in employment and job training programs;

(2) engage in job development and job advancement activities for eligible veterans and eligible persons, including maximum coordination with appropriate officials of the Veterans' Administration in that agency's carrying out of its responsibilities under subchapter IV of chapter 3 of this title and in the conduct of job fairs, job marts, and other special programs to match eligible veterans and eligible persons with appropriate job and job training opportunities;

(3) assist in securing and maintaining current information as to the various types of available employment and training opportunities, including maximum use of electronic data processing and telecommunications systems and the matching of an eligible veteran's or an eligible person's particular qualifications with an available job or on-job training or apprenticeship opportunity which is commensurate with those qualifications;

(4) promote the interest of employers and labor unions in employing eligible veterans and eligible persons and in conducting on-job training and apprenticeship programs for such veterans and persons;

(5) maintain regular contact with employers, labor unions, training programs and veterans' organizations with a view to keeping them advised of eligible veterans and eligible persons available for employment and training and to keeping eligible veterans and eligible persons advised of opportunities for employment and training;

(6) promote and facilitate the participation of veterans in Federal and federally funded employment and training programs and directly monitor the implementation and operation of such programs to ensure that eligible veterans, veterans of the Vietnam era, disabled veterans, and eligible persons receive such priority or other special consideration in the provision of services as is required by law or regulation;

(7) assist in every possible way in improving working conditions and the advancement of employment of eligible veterans and eligible persons;

(8) supervise the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

(9) be responsible for ensuring that complaints of discrimination filed under such section are resolved in a timely fashion;

(10) working closely with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, cooperate with employers to identify disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

(11) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need employment placement assistance or vocational training assistance; and

(12) when requested by a Federal or State agency or a private employer, assist such agency or employer in identifying and acquiring prosthetic and sensory aids and devices which tend to enhance the employability of disabled veterans.

§2003A. Disabled veterans' outreach program

(a)(1) The Secretary of Labor, acting through the Assistant Secretary for Veterans' Employment, shall make available for use in each State, directly or by grant or contract, such funds as may be necessary to support a disabled veterans' outreach program designed to meet the employment needs of veterans, especially disabled veterans of the Vietnam era.

(2) Funds provided for use in a State under this subsection shall be sufficient to support the appointment of one disabled veterans' outreach program specialist for each 5,300 veterans of the Vietnam era and disabled veterans residing in such State. Each such specialist shall be a veteran. Preference shall be given in the appointment of such specialists to disabled veterans of the Vietnam era. If the Secretary finds that a disabled veteran of the Vietnam era is not available for any such appointment, preference for such appointment shall be given to other disabled veterans. If the Secretary finds that no disabled veteran is available for such appointment, such appointment may be given to any veteran. Each such specialist shall be compensated at a rate not less than the rate prescribed for an entry level professional in the State government of the State concerned.

(3) The Secretary, acting through the Assistant Secretary of Labor for Veterans' Employment, shall also make available for use in the States such funds, in addition to those made available to carry out paragraphs (1) and (2) of this subsection, as may be necessary to support the reasonable expenses of such specialists for training, travel, supplies, and fringe benefits.

(4) Specialists appointed pursuant to paragraph (2) of this subsection shall be in addition to and shall not supplant employees assigned to local employment service offices pursuant to section 2004 of this title.

(5) The distribution and use of funds provided for use in States under this section shall be subject to the continuing supervision and monitoring of the Assistant Secretary for Veterans' Employment and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section.

(b)(1) Pursuant to regulations prescribed by the Secretary of Labor, disabled veterans' outreach program specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with priority for the provision of services in the following order:

(A) Services to disabled veterans of the Vietnam era who are participating in or have completed a program of vocational rehabilitation under chapter 31 of this title.

(B) Services to other disabled veterans.

(C) Services to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

In the provision of services in accordance with this paragraph, maximum emphasis in meeting the employment needs of veterans shall be placed on assisting economically or educationally disadvantaged veterans.

(2) Not more than three-fourths of the disabled veterans' outreach program specialists in each State shall be stationed at local employment service offices in such State. The Secretary, after consulting the Administrator and the State Director for Veterans' Employment assigned to a State under section 2003 of this title, may waive the limitation in the preceding sentence for that State so long as the percentage of all disabled veterans' outreach program specialists that are stationed at local employment service offices in all States does not exceed 80 percent. Specialists not so stationed shall be stationed at centers established by the Veterans' Administration to provide a program of readjustment counseling pursuant to section 612A of this title, veterans assistance offices established by the Veterans' Administration pursuant to section 242 of this title, and such other sites as may be determined to be appropriate in

accordance with regulations prescribed by the Secretary after consultation with the Administrator.

(c) Each disabled veterans' outreach program specialist shall carry out the following functions for the purpose of providing services to eligible veterans in accordance with the priorities set forth in subsection (b) of this section:

(1) Development of job and job training opportunities for such veterans through contacts with employers, especially small- and medium-size private sector employers.

(2) Pursuant to regulations prescribed by the Secretary after consultation with the Administrator, promotion and development of apprenticeship and other on-job training positions pursuant to section 1787 of this title.

(3) The carrying out of outreach activities to locate such veterans through contacts with local veterans organizations, the Veterans' Administration, the State employment service agency and local employment service offices, and community-based organizations.

(4) Provision of appropriate assistance to community-based groups and organizations and appropriate grantees under other Federal and federally funded employment and training programs in providing services to such veterans.

(5) Provision of appropriate assistance to local employment service office employees with responsibility for veterans in carrying out their responsibilities pursuant to this chapter.

(6) Consultation and coordination with other appropriate representatives of Federal, State, and local programs for the purpose of developing maximum linkages to promote employment opportunities for and provide maximum employment assistance to such veterans.

(7) The carrying out of such other duties as will promote the development of entry-level and career job opportunities for such veterans.

(8) Development of outreach programs in cooperation with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, with educational institutions, and with employers in order to ensure maximum assistance to disabled veterans who have completed or are participating in a vocational rehabilitation program under such chapter.

(d) The Secretary of Labor shall administer the program provided for by this section through the Assistant Secretary of Labor for Veterans' Employment. The Secretary shall monitor the appointment of disabled veterans' outreach program specialists to ensure compliance with the provisions of subsection (a)(2) of this section with respect to the employment of such specialists.

§2004. Employees of local offices

Except as may be determined by the Secretary of Labor based on a demonstrated lack of need for such services, there shall be assigned by the administrative head of the employment service in each State one or more employees, preferably eligible veterans or eligible persons, on the staffs of local employment service offices, whose services shall be fully devoted to discharging the duties prescribed for the veterans' employment representative and such representative's assistants.

§2005. Cooperation of Federal agencies

All Federal agencies shall furnish the Secretary of Labor such records, statistics, or information as the Secretary may deem necessary or appropriate in administering the provisions of this chapter, and shall otherwise cooperate with the Secretary in providing continuous employment and training opportunities for eligible veterans and eligible persons.

§2006. Estimate of funds for administration; authorization of appropriations

(a) The Secretary of Labor shall estimate the funds necessary for the proper and efficient administration of this chapter and chapters 42 and 43 of this title. Such estimated sums shall include the annual amounts necessary for salaries, rents, printing and binding, travel, and communications. Sums thus estimated shall be included as a special item in the annual budget for the Department of Labor. Estimated funds necessary for proper counseling, placement, and training services to eligible veterans and eligible persons provided by the various State public employment service agencies shall each be separately identified in the budgets of those agencies as approved by the Department of Labor. Funds estimated pursuant to the first sentence of this subsection shall include amounts necessary to fund the disabled veterans' outreach program under section 2003A of this title and shall be approved by the Secretary of Labor only if the level of funding proposed is in compliance with such section. Each budget submission with respect to such funds shall include a separate listing of the proposed number, by State, for disabled veterans outreach program specialists appointed under such section. The Secretary shall carry out this subsection through the Assistant Secretary for Veterans' Employment.

(b) There are authorized to be appropriated such sums as may be necessary for the proper and efficient administration of this chapter.

(c) In the event that the regular appropriations Act making appropriations for administrative expenses for the Department of Labor with respect to any fiscal year does not specify an amount for the purposes specified in subsection (b) of this section for that fiscal year, then of the amounts appropriated in such Act there shall be available only for the purposes specified in subsection (b) of this section such amount as was set forth in the budget estimate submitted pursuant to subsection (a) of this section.

(d) Any funds made available pursuant to subsections (b) and (c) of this section shall not be available for any purpose other than those specified in such subsections, except with the approval of the Secretary of Labor, upon the recommendation of the Assistant Secretary of Labor for Veterans' Employment, based on a demonstrated lack of need for such funds for such purposes.

§2007. Administrative controls; annual report

(a) The Secretary of Labor shall establish administrative controls for the following purposes:

(1) To insure that each eligible veteran, especially veterans of the Vietnam era and disabled veterans, and each eligible person who requests assistance under this chapter shall promptly be placed in a satisfactory job or job training opportunity or receive some other specific form of assistance designed to enhance such veteran's and eligible person's employment prospects substantially, such as individual job development or employment counseling services.

(2) To determine whether or not the employment service agencies in each State have committed the necessary staff to insure that the provisions of this chapter are carried out; and to arrange for necessary corrective action where staff resources have been determined by the Secretary of Labor to be inadequate.

(b) The Secretary of Labor shall establish definitive performance standards for determining compliance by the State public employment service agencies with the provisions of this chapter and chapter 42 of this title. A full report as to the extent and reasons for any noncompliance by any such State agency during any fiscal year, together with the agency's plan for corrective action during the succeeding year, shall be included in the annual report of the Secretary of Labor required by subsection (c) of this section.

(c) The Secretary of Labor shall report annually to the Congress on the success of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of this chapter. The report shall include, by State, specification of the numbers of eligible veterans, veterans of the Vietnam era, disabled veterans, special disabled veterans, and eligible persons who registered for assistance with the public employment service system and, of each of such categories, the number referred to jobs, the number placed in permanent jobs as defined by the Secretary, the number referred to and the number placed in employment and job training programs supported by the Federal Government, the number counseled, and the number who received some reportable service. The report shall also include any determination by the Secretary under section 2004, 2006, or 2007(a) of this title and a statement of the reasons for such determination. The report shall also include a report on activities carried out under section 2003A of this title.

§2008. Cooperation and coordination with the Veterans' Administration

In carrying out the Secretary's responsibilities under this chapter, the Secretary of Labor shall from time to time consult with the Administrator and keep the Administrator fully advised of activities carried out and all data gathered pursuant to this chapter to insure maximum cooperation and coordination between the Department of Labor and the Veterans' Administration.

§2009. National veterans' employment and training programs

(a) The Secretary of Labor shall—

(1) administer through the Assistant Secretary of Labor for Veterans' Employment all national programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of disabled veterans and veterans of the Vietnam era;

(2) in order to make maximum use of available resources, encourage all such national programs and all grantees under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns), educational institutions, trade associations, and labor unions;

(3) ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to such veterans under all such national programs by coordinating and consulting with the Administrator with respect to programs conducted under other provisions of this title, with particular emphasis on

coordination of such national programs with readjustment counseling activities carried out under section 612A of this title, apprenticeship or other on-job training programs carried out under section 1787 of this title, and rehabilitation and training activities carried out under chapter 31 of this title; and

(4) ensure that job placement activities are carried out in coordination and cooperation with appropriate State public employment service officials.

(b) Not later than February 1 of each year, the Secretary of Labor shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on the operation during the preceding fiscal year of national programs for the provision of employment and training services designed to meet the needs of veterans described in subsection (a) of this section. Each such report shall include an evaluation of the effectiveness of such programs during such fiscal year in meeting the goals established in such subsection, the efficiency with which services were provided under such programs during such year, and such recommendation for further legislative action relating to veterans' employment as the Secretary considers appropriate.

§2010. Secretary of Labor's Committee on Veterans' Employment

(a) There is established within the Department of Labor an advisory committee to be known as the "Secretary's Committee on Veterans' Employment". The committee shall meet at least quarterly for the purpose of bringing to the attention of the Secretary problems and issues relating to veterans' employment.

(b) The committee shall be chaired by the Secretary of Labor. The Assistant Secretary of Labor for Veterans' Employment shall serve as vice chairman of the committee. The committee shall include—

(1) representatives of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Secretary of Health and Human Services;

(D) the Director of the Office of Personnel Management;

(E) the Chairman of the Equal Employment Opportunity Commission; and

(F) the Administrator of the Small Business Administration; and

(2) a representative of each of the chartered veterans' organizations having a national employment program.

(c) Members of the committee shall serve without compensation or other reimbursement for their service on the committee.

CHAPTER 42—EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS

§2011. Definitions

As used in this chapter—

(1) The term "special disabled veteran" means—

(A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans' Administration for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of this title to have a serious employment handicap; or

(B) a person who was discharged or released from active duty because of service-connected disability.[12]

(2)(A) Subject to subparagraph (B) of this paragraph, the term "veteran of the Vietnam era" means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(B) No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

(3) The term "disabled veteran" means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans' Administration, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(4) The term "eligible veteran" means a person who (A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.

(5) The term "department or agency" means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5 and the United States Postal Service and the

---

[12] P.L. 98-223, §206, amended paragraph (1) in its entirety.

Postal Rate Commission, and the term "department, agency, or instrumentality in the executive branch" includes the United States Postal Service and the Postal Rate Commission.

§2012. Veterans' employment emphasis under Federal contracts

(a) Any contract in the amount of $10,000 or more entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its suitable employment openings, and (2) each such local office shall give such veterans priority in referral to such employment openings.

(b) If any special disabled veteran or veteran of the Vietnam era believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary shall include as part of the annual report required by section 2007(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing suitable employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2) of this section.

(d)(1) Each contractor to whom subsection (a) of this section applies shall, in accordance with regulations which the Secretary shall prescribe, report at least annually to the Secretary on—

(A) the number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; and

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are veterans of the Vietnam era or special disabled veterans.

(2) The Secretary shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary.

§2013. Eligibility requirements for veterans under Federal employment and training programs

Any (1) amounts received as pay or allowances by any person while serving on active duty, (2) period of time during which such person served on such active duty, and (3) amounts received under chapters 11, 13, 31, 34, 35, and 36 of this title by an eligible veteran, and any amounts received by an eligible person under chapters 13 and 35 of such title, shall be disregarded in determining the needs or qualifications of participants in any public service employment program, any emergency employment program, and job training program assisted under the Economic Opportunity Act of 1964, any employment or training program assisted under the Comprehensive Employment and Training Act, or any other employment or training (or related) program financed in whole or in part with Federal funds.

§2014. Employment within the Federal Government

(a)(1)[13] It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

(2) For the purposes of this section, the term "agency" means a department, agency, or instrumentality in the executive branch.[14]

(b)(1) To further the policy stated in subsection (a) of this section, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, the veterans readjustment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

---

[13] P.L. 98-543, §211(a)(1), inserted "(1)".
[14] P.L. 98-543, §211(a)(2), added paragraph (2).

(A) such an appointment may be made up to and including the level GS-9[15] or its equivalent;

(B) a veteran of the Vietnam era shall be eligible for such an appointment without any time limitation with respect to eligibility for such an appointment;[16]

(C) a veteran of the Vietnam era who is entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be eligible for such an appointment without regard to the number of years of education completed by such veteran; and[17]

(D) a veteran given an appointment under the authority of this subsection whose employment under the appointment is terminated within one year after the date of such appointment shall have the same right to appeal that termination to the Merit Systems Protection Board as a career or career-conditional employee has during the first year of employment.[18]

(2) No veterans readjustment appointment may be made under authority of this subsection after December 31, 1989[19].

(c) Each agency[20] shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such agency[21] as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health and Human Services, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each agency to carry out the purpose and provisions of this section. The Office shall periodically obtain (on at least an annual basis) information on the implementation of this section by each agency and on the activities of each agency to carry out the purpose and provisions of this section. The information obtained shall include specification of the use and extent of appointments made by each agency under subsection (b) of this section and the results of the plans required under subsection (c) of this section.[22]

(e)(1) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section. Each such report shall include the following information with respect to each agency:

(A) The number of appointments made under subsection (b) of this section since the last such report and the grade levels in which such appointments were made.

(B) The number of individuals receiving appointments under such subsection whose appointments were converted to career or career-conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(C) The number of such terminations since the last such report that were initiated by the agency involved and the number of such terminations since the last such report that were initiated by the individual involved.

(D) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(2) Information shown for an agency under clauses (A) through (D) of paragraph (1) of this subsection—

(A) shall be shown for all veterans; and

(B) shall be shown separately (i) for veterans of the Vietnam era who are entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty, and (ii) for other veterans.[23]

---

[15] P.L. 98-543, §211(b)(1)(A), struck out "GS-7" and substituted "GS-9".

[16] P.L. 98-543, §211(b)(1)(B), struck out "and".

[17] P.L. 98-543, §211(b)(1)(C), struck out the period and substituted "; and".

[18] P.L. 98-543, §211(b)(1)(D), added subparagraph (D).

[19] P.L. 98-543, §211(b)(2), struck out "1984" and substituted "1986".
P.L. 99-576, §332, struck out "September 30, 1986" and substituted "December 31, 1989".

[20] P.L. 98-543, §211(c)(1), struck out "department, agency, and instrumentality in the executive branch" and substituted "agency".

[21] P.L. 98-543, §211(c)(2), struck out "department, agency, or instrumentality" and substituted "agency".

[22] P.L. 98-543, §211(d), amended subsection (d) in its entirety.

[23] P.L. 98-543, §211(d), amended subsection (e) in its entirety.

(f) Notwithstanding section 2011 of this title, the terms "veteran" and "disabled veteran" as used in subsection (a) of this section shall have the meaning provided for under generally applicable civil service law and regulations.

(g) To further the policy stated in subsection (a) of this section, the Administrator may give preference to qualified special disabled veterans and qualified veterans of the Vietnam era for employment in the Veterans' Administration as veterans' benefits counselors and veterans' claims examiners and in positions to provide the outreach services required under section 241 of this title, to serve as veterans' representatives at certain educational institutions as provided in section 243 of this title, or to provide readjustment counseling under section 612A of this title to veterans of the Vietnam era.

* * * * * * *

CHAPTER 43—VETERANS' REEMPLOYMENT RIGHTS

§2021. Right to reemployment of inducted persons; benefits protected

(a) In the case of any person who is inducted into the Armed Forces of the United States under the Military Selective Service Act (or under any prior or subsequent corresponding law) for training and service and who leaves a position (other than a temporary position) in the employ of any employer in order to perform such training and service, and (1) receives a certificate described in section 9(a) of the Military Selective Service Act (relating to the satisfactory completion of military service), and (2) makes application for reemployment within ninety days after such person is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its territories, or possessions, or political subdivisions thereof, or the District of Columbia, such person shall—

(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if such person so requests, be employed in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case;

(B) if such position was in the employ of a State, or political subdivision thereof, or a private employer, such person shall—

(i) if still qualified to perform the duties of such position, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer's successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Nothing in this chapter shall excuse noncompliance with any statute or ordinance of a State or political subdivision thereof establishing greater or additional rights or protections than the rights and protections established pursuant to this chapter.

(b)(1) Any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section shall be considered as having been on furlough or leave of absence during such person's period of training and service in the Armed Forces, shall be so restored or reemployed without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration or reemployment.

(2) It is hereby declared to be the sense of the Congress that any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section should be so restored or reemployed in such manner

as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.

(3) Any person who seeks or[24] holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied hiring,[25] retention in employment,[26] or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

(c) The rights granted by subsections (a) and (b) of this section to persons who left the employ of a State or political subdivision thereof and were inducted into the Armed Forces shall not diminish any rights such persons may have pursuant to any statute or ordinance of such State or political subdivision establishing greater or additional rights or protections.

§2022. Enforcement procedures

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section 2021(a), (b)(1), or (b)(3), or 2024 of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions.[27] Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary party respondent. No State statute of limitations shall apply to any proceedings under this chapter.

§2023. Reemployment by the United States, territory, possession, or the District of Columbia

(a) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) and who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by any territory or possession, or political subdivision thereof, or by the District of Columbia, shall be so restored or reemployed by such agency or the successor to its functions, or by such territory, possession, political subdivision, or the District of Columbia. In any case in which, upon appeal of any person who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by the District of Columbia, the Director of the Office of Personnel Management finds that—

(1) such agency is no longer in existence and its functions have not been transferred to any other agency; or

(2) for any reason it is not feasible for such person to be restored to employment by such agency or by the District of Columbia;

the Director shall determine whether or not there is a position in any other agency in the executive branch of the Government or in the government of the District of Columbia for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists or by the government of the District of Columbia, as the case may be. The Director is authorized and directed to issue regulations giving full force and effect to the provisions of this section insofar as they relate to persons entitled to be restored to or employed in positions in the executive branch of the Government or in the government of the District of Columbia, including persons entitled to be reemployed under the last sentence of subsection (b) of this section. The agencies in the executive branch of the Government and the government of the District of Columbia shall comply with such rules, regulations, and orders issued by the Director pursuant to this subsection. The Director is authorized and directed when the Director finds, upon appeal of the person concerned, that any agency in the executive branch of the Government or the government of the District of Columbia has failed or refuses to comply with the provisions of this section, to issue an order specifically requiring such agency or the government of the District of Columbia to comply with such provisions and to compensate such person for any loss of salary or wages suffered by reason of failure to comply with such provisions, less any amounts received by such person through other employment, unemployment compensation, or readjustment allowances. Any such compensation ordered to be paid by the Director shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions, and shall be paid by the head of the agency concerned or by the government of the District of Columbia out of appropriations currently available for salary and expenses of such agency or government, and such appropriations shall be available for such purpose. As used in this chapter, the term "agency in the executive branch of the Government" means any department, independent establishment, agency, or corporation in the executive branch of the United States Government (including the United States Postal Service and the Postal Rate Commission).

---

[24] P.L. 99-576, §331(1), inserted "seeks or".

[25] P.L. 99-576, §331(2), inserted "hiring,".

[26] P.L. 99-576, §331(3), inserted a comma.

[27] P.L. 98-620, §402(36), struck out "The court shall order speedy hearing in any such case and shall advance it on the calendar."

(b) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title, and who was employed, immediately before entering the Armed Forces, in the legislative branch of the Government, shall be so restored or employed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces. In any case in which it is not possible for any such person to be restored to or employed in a position in the legislative branch of the Government and such person is otherwise eligible to acquire a status for transfer to a position in the competitive service in accordance with section 3304(c) of title 5, the Director of the Office of Personnel Management shall, upon appeal of such person, determine whether or not there is a position in the executive branch of the Government for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists.

(c) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title and who was employed, immediately before entering the Armed Forces, in the judicial branch of the Government, shall be so restored or reemployed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces.

§2024. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

(b)(1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four ~~years, and~~ the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service limitation governing eligibility for reemployment rights under subsection (b)(1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than twelve consecutive weeks shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If such an employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or such employer's successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or such employer's successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such employee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 502, 503, 504, or 505 of title 32 is considered active duty for training. For the purposes of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37 is considered inactive duty training.

(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than twelve consecutive weeks; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by the[28] period of such active duty.

§2025. Assistance in obtaining reemployment

The Secretary of Labor, through the Office of Veterans' Reemployment Rights, shall render aid in the replacement in their former positions or reemployment of persons who have satisfactorily completed any period of active duty in the Armed Forces or the Public Health Service. In rendering such aid, the Secretary shall use existing Federal and State agencies engaged in similar or related activities and shall utilize the assistance of volunteers.

§2026. Prior rights for reemployment

In any case in which two or more persons who are entitled to be restored to or employed in a position under the provisions of this chapter or of any other law relating to similar reemployment benefits left the same position in order to enter the Armed Forces, the person who left such position first shall have the prior right to be restored thereto or reemployed on the basis thereof, without prejudice to the reemployment rights of the other person or persons to be restored or reemployed.

* * * * * * *

CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

* * * * * * *

§3005. Joint applications for social security and dependency and indemnity compensation

The Administrator and the Secretary of Health and Human Services shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.)[29]. Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.)[30]; and when an application on such form has been filed with either the Administrator or the Secretary of Health and Human Services, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.)[31]. A copy of each such application filed with the Administrator, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Administrator with such application, and which may be needed by the Secretary in connection therewith, shall be transmitted by the Administrator to the Secretary; and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator. The preceding sentence shall not prevent the Secretary and the Administrator from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.)[32], respectively.

---

[28] P.L. 99-576, §701(60), struck out "his" and substituted "the".

[29] P.L. 98-160, §702(16), struck out "subchapter II of chapter 7 of title 42" and substituted "title II of the Social Security Act (42 U.S.C. 401 et seq.)".

[30] See footnote 29.

[31] See footnote 29.

[32] See footnote 29.

§3006. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Administrator as the Administrator[33] may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

§3101. Nonassignability and exempt status of benefits

(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a[34] benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's[35] estate; or (2) any beneficiary or the beneficiary's[36] estate except amounts due the United States by such beneficiary or the beneficiary's[37] estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's[38] estate or to the beneficiary's[39] dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

---

[33] P.L. 99-576, §701(62), struck out "he" and substituted "the Administrator".

[34] P.L. 99-576, §701(68)(A), struck out "his or her" and substituted "a".

[35] P.L. 99-576, §701(68)(B), struck out "his" and substituted "the beneficiary's".

[36] See footnote 35.

[37] See footnote 35.

[38] See footnote 35.

[39] See footnote 35.

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10.[40]

(d)[41] Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Veterans' Administration shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (26 U.S.C. 6331 et seq.).

(e)[42] In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Veterans' Administration but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 3105 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Veterans' Administration of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

* * * * * * *

§3103A. Minimum active-duty service requirement

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Veterans' Administration that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Veterans' Administration.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;

(B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;

(C) to a person who has a disability that the Administrator has determined to be compensable under chapter 11 of this title;

(D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;[43]

(E) to benefits under chapter 19 of this title; or[44]

(F) to benefits under chapter 30 of this title in the case of a person entitled to benefits under such chapter by reason of section 1411(a)(1)(A)(ii)(II) of this title.[45]

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Veterans' Administration.

---

[40] P.L. 99-576, §504(2), added this subsection (c).

[41] P.L. 99-576, §504(1), redesignated the former subsection (c) as subsection (d).

[42] P.L. 99-576, §504(1), redesignated subsection (d) as subsection (e).

[43] P.L. 99-576, §321(11)(A), struck out "or".

[44] P.L. 99-576, §321(11)(B), struck out the period and substituted "; or".

[45] P.L. 99-576, §321(11)(C), added subparagraph (F).

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.

(d)(1) Notwithstanding any other provision of law and except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty, is not eligible by reason of such period of active duty for any benefit under Federal law (other than this title or any other law administered by the Veterans' Administration), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty on or after the date of the enactment of this subsection[46] and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a) of the Social Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning on or after the date of the enactment of this subsection[47], or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term "benefit" includes a right or privilege, but does not include a refund of a participant's contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

* * * * * * *

§3112. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Administrator shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 521, 541, and 542 of this title and the rate of increased pension paid under such sections 521 and 541 on account of children, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Administrator shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 415 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Administrator shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 415 of this title to any parent whose annual income is more than $800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than $1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

---

[46] October 14, 1982 [P.L. 97-306, 96 Stat. 1445].
[47] See footnote 46.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Administrator in accordance with regulations which the Administrator shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 521, 541, and 542 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 415 of this title, the Administrator shall publish such rates and limitations (including those rates adjusted by the Administrator under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Administrator may round such rates and income limitations in such manner as the Administrator considers equitable and appropriate for ease of administration.

* * * * * * *

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

* * * * * * *

§5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community:

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

The Administrator may determine the geographical limitations of a medical community as used in this section.

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment. Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Veterans' Administration health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Veterans' Administration health care facility shall apply to veterans treated hereunder.

(d) When a Veterans' Administration health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)[48], such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment, in accordance with—

(1) rates prescribed by the Secretary of Health and Human Services, after consultation with the Administrator, and

(2) procedures jointly prescribed by the Secretary and the Administrator to assure reasonable quality of care and services and efficient and economical utilization of resources,

to such facility therefor or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include—

---

[48] P.L. 98-160, §702(20), struck out "subchapter XVIII of chapter 7 of title 42" and substituted "title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)".

(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

(2) recommendations for the improvement or more effective administration of such activities.[49]

* * * * * * *

§5056. Coordination with health services development activities carried out under the National Health Planning and Resources Development Act of 1974

The Administrator and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under part F of title XVI of the Public Health Service Act (42 U.S.C. 300t et seq.).

* * * * * * *

[*Internal References.*—Social Security Act §202(o) cites §3005 of title 38; §210(a)(5)(B)(i)(IV) cites chapter 43; §210(l)(2) cites §101(21) and (22); §210(l)(3) cites §101(23); §210(m) cites §101(27); §217(b)(2) cites §3101 of title 38; §224(a)(2)(end) cites title 38; §901(c)(1)(A)(iii) cites §2003 of title 38; §901(c)(1)(B)(iv) cites chapter 41 (except section 2003) of title 38; §1866(a)(1)(J) cites §613 and §1866(a)(1)(L) cites §603 of title 38. Title XVIII, Part A (at §1811), has a footnote referring to 38 U.S.C. 5053. Social Security Act §229(a)(2) has a footnote referring to 38 U.S.C. 3103A, §1106(b) has a footnote referring to 38 U.S.C. 3006 and §§1862(b)(1) and (b)(3)(B)(ii)(II)(b) have footnotes referring to 38 U.S.C. 5053(d). P.L. 90-248, §402 catchline (Vol. II, p. 478), has a footnote to title 38. P.L. 94-581, §115(c) (Vol. II, p. 596), cites §5053(d) of title 38. P.L. 96-466, §512 (Vol. II, p. 638), cites chapter 41 of title 38.]

REVISED STATUTES OF THE UNITED STATES

2d EDITION, 1878[1]

[CONTRACTS]

SEC. 3709. [41 U.S.C. §5] Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $25,000[2], (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)[3], (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

* * * * * * *

[*Internal References.*—Social Security Act §§1842(b)(1) and 1886(e)(6)(C)(iii) cite §3709 of the Revised Statutes.]

---

[49] P.L. 99-576, §231(c)(1), added subsection (e).

[1] Approved March 2, 1861, chapter 84, §10, 12 Stat. 220. P.L. 79-600, §9, revised §3709 of the Revised Statutes of the United States, in its entirety, effective August 2, 1946, 60 Stat. 809.
The provision has been further amended.

[2] P.L. 98-191, §9(b), struck out "$10,000" and substituted "$25,000".

[3] See 40 U.S.C. §§471 et seq.

P.L. 71-10, Approved June 15, 1929 (46 Stat. 11)
Agricultural Marketing Act

SEC. 15. [12 U.S.C. 1141j] * * *

(g) "Agricultural commodity" defined. As used in this Act, the term "agricultural commodity" includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [7 U.S.C. 92] (June 15, 1929; c.24, §15, 46 Stat. 18).

* * * * * * *

[*Internal Reference.*—Social Security Act §210(f)(3) cites §15(g) of the Agricultural Marketing Act, as amended.]

P.L. 71-420, Approved June 10, 1930 (46 Stat. 531)
Perishable Agricultural Commodities Act, 1930

* * * * * * *

SEC. 14. [7 U.S.C. 499n] (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C. Supp. 2, secs. 1 to 17(a)), as prima facie evidence of the truth of the statements therein contained;[1]

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., sec. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

* * * * * * *

[*Internal Reference.*—Social Security Act §218(b)(5) cites §14 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n).]

P.L. 71-798, Approved March 3, 1931 (46 Stat. 1494)
[Davis-Bacon Act]

* * * * * * *

SEC. 1. [40 U.S.C. 276a] (a) That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

---

[1] As in original. Semicolon should be replaced by a period.

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) the basic hourly rate of pay; and

(2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforcible commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as this Act and other Acts incorporating this Act by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforcible commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under this Act, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

SEC. 2. [40 U.S.C. 276a-1] Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the

Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

SEC. 3. [40 U.S.C. 276a-2] (a) The Comptroller General of the United States is hereby authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to who there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

SEC. 4. [40 U.S.C. 276a-3] This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

SEC. 5. [40 U.S.C. 276a-4] This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act[1].

SEC. 6. [40 U.S.C. 276a-5] In the event of a national emergency the President is authorized to suspend the provisions of this Act.

* * * * * * *

[*Internal References.*—P.L. 91-648, §208(h)(3), cites the Davis-Bacon Act (40 U.S.C. 276 et seq.).]

P.L. 73-30, Approved June 6, 1933 (48 Stat. 113)

Wagner-Peyser Act

SECTION 1. [29 U.S.C. 49] In order to promote the establishment and maintenance of a national system of public employment offices, the United States Employment Service shall be established and maintained within the Department of Labor.

SEC. 2. [29 U.S.C. 49a] For purposes of this Act—

(1) the term "chief elected official or officials" has the same meaning given that term under the Job Training Partnership Act;

(2) the term "private industry council" has the same meaning given that term under the Job Training Partnership Act;

(3) the term "Secretary" means the Secretary of Labor;

(4) the term "service delivery area" has the same meaning given that term under the Job Training Partnership Act; and

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

SEC. 3. [29 U.S.C. 49b] (a) The United States Employment Service shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.

(b) It shall be the duty of the Secretary of Labor to assure that unemployment insurance and employment service offices in each State, as appropriate, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act,[1] of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.),[2] shall (and, notwithstanding any other provision of law, is authorized to) furnish to such agency making the request, from any data contained in the files of any such office, information with respect to any individual specified in the request as to (1) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (2) the current (or most recent) home address of such individual, and (3) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

---

[1] August 30, 1935 (P.L. 74-403, 49 Stat. 1011).

SEC. 4. [29 U.S.C. 49c] In order to obtain the benefits of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act.

SEC. 5. [29 U.S.C. 49d] (a) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts from time to time as the Congress may deem necessary to carry out the purposes of this Act.

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which—

(1) except in the case of Guam, has an unemployment compensation law approved by the Secretary under the Federal Unemployment Tax Act and is found to be in compliance with section 303 of the Social Security Act, as amended,

(2) is found to have coordinated the public employment services with the provision of unemployment insurance claimant services, and

(3) is found to be in compliance with this Act,

such amounts as the Secretary determines to be necessary for allotment in accordance with section 6.

(c)(1) Beginning with fiscal year 1985 and thereafter appropriations for any fiscal year for programs and activities assisted or conducted under this Act shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

(2) Funds obligated for any program year may be expended by the State during that program year and the two succeeding program years and no amount shall be deobligated on account of a rate of expenditure which is consistent with the program plan.

(3)(A) Appropriations for fiscal year 1984 shall be available both to fund activities for the period between October 1, 1983, and July 1, 1984, and for the program year beginning July 1, 1984.

(B) There are authorized to be appropriated such additional sums as may be necessary to carry out the provisions of this paragraph for the transition to program year funding.

SEC. 6. [29 U.S.C. 49e] (a) From the amounts appropriated pursuant to section 5 for each fiscal year, the Secretary shall first allot to Guam and the Virgin Islands an amount which, in relation to the total amount available for the fiscal year, is equal to the allotment percentage which each received of amounts available under this Act in fiscal year 1983.

(b)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the Secretary shall allot the remainder of the sums appropriated and certified pursuant to section 5 of this Act for each fiscal year among the States as follows:

(A) two-thirds of such sums shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State as compared to the total number of such individuals in all States; and

(B) one-third of such sums shall be allotted on the basis of the relative number of unemployed individuals in each State as compared to the total number of such individuals in all States.

For purposes of this paragraph, the number of individuals in the civilian labor force and the number of unemployed individuals shall be based on data for the most recent calendar year available, as determined by the Secretary of Labor.

(2) No State's allotment under this section for any fiscal year shall be less than 90 percent of its allotment percentage for the fiscal year preceding the fiscal year for

---

[1] P.L. 99-198, §1535(b)(2)(A), struck out "or" and substituted a comma.

[2] P.L. 99-198, §1535(b)(2)(B), inserted "or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.),".

which the determination is made. For the purpose of this section, the Secretary shall determine the allotment percentage for each State (including Guam and the Virgin Islands) for fiscal year 1984 which is the percentage that the State received under this Act for fiscal year 1983 of the total amounts available for payments to all States for such fiscal year. For each succeeding fiscal year, the allotment percentage for each such State shall be the percentage that the State received under this Act for the preceding fiscal year of the total amounts available for allotments for all States for such fiscal year.

(3) For each fiscal year, no State shall receive a total allotment under paragraphs (1) and (2) which is less than 0.28 percent of the total amount available for allotments for all States.

(4) The Secretary shall reserve such amount, not to exceed 3 percent of the sums available for allotments under this section for each fiscal year, as shall be necessary to assure that each State will have a total allotment under this section sufficient to provide staff and other resources necessary to carry out employment service activities and related administrative and support functions on a statewide basis.

(5) The Secretary shall, not later than March 15 of fiscal year 1983 and each succeeding fiscal year, provide preliminary planning estimates and shall, not later than May 15 of each such fiscal year, provide final planning estimates, showing each State's projected allocation for the following year.

SEC. 7. [29 U.S.C. 49f] (a) Ninety percent of the sums allotted to each State pursuant to section 6 may be used—

(1) for job search and placement services to job seekers including counseling, testing, occupational and labor market information, assessment, and referral to employers;

(2) for appropriate recruitment services and special technical services for employers; and

(3) for any of the following activities:

(A) evaluation of programs;

(B) developing linkages between services funded under this Act and related Federal or State legislation, including the provision of labor exchange services at education sites;

(C) providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures;

(D) developing and providing labor market and occupational information;

(E) developing a management information system and compiling and analyzing reports therefrom; and

(F) administering the work test for the State unemployment compensation system and providing job finding and placement services for unemployment insurance claimants.

(b) Ten percent of the sums allotted to each State pursuant to section 6 shall be reserved for use in accordance with this subsection by the Governor of each such State to provide—

(1) performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered employment, retention, and other appropriate factors;

(2) services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate private industry council and chief elected official or officials or other public agencies or private nonprofit organizations; and

(3) the extra costs of exemplary models for delivering services of the types described in subsection (a).

(c) In addition to the services and activities otherwise authorized by this Act, the United States Employment Service or any State agency designated under this Act may perform such other services and activities as shall be specified in contracts for payment or reimbursement of the costs thereof made with the Secretary of Labor or with any Federal, State, or local public agency, or administrative entity under the Job Training Partnership Act, or private nonprofit organization.

SEC. 8. [29 U.S.C. 49g] (a) Any State desiring to receive the benefits of this Act shall, by the agency designated to cooperate with the United States Employment Service, submit to the Secretary of Labor detailed plans for carrying out the provisions of this Act within such State.

(b) Prior to submission of such plans to the Secretary—

(1) the employment service shall develop jointly with each appropriate private industry council and chief elected official or officials for the service delivery area (designated under the Job Training Partnership Act) those components of such plans applicable to such area;

(2) such plans shall be developed taking into consideration proposals developed jointly by the appropriate private industry council and chief elected official or officials in the service delivery area affected;

(3) such plans shall be transmitted to the State job training coordinating council (established under such Act) which shall certify such plans if it determines (A) that the components of such plans have been jointly agreed to by the employment service and appropriate private industry council and chief elected official or officials; and (B) that such plans are consistent with the Governor's coordination and special services plan under the Job Training Partnerhsip Act;

(4) if the State job training coordinating council does not certify that such plans meet the requirements of clauses (A) and (B) of paragraph (3), such plans shall be returned to the employment service for a period of thirty days for it to consider, jointly with the appropriate private industry council and chief elected official or officials, the council's recommendations for modifying such plans; and

(5) if the employment service and the appropriate private industry council and chief elected official or officials fail to reach agreement upon such components of such plans to be submitted finally to the Secretary, such plans submitted by the State agency shall be accompanied by such proposed modifications as may be recommended by any appropriate disagreeing private industry council and chief elected official or officials affected, and the State job training coordinating council shall transmit to the Secretary its recommendations for resolution thereof.

(c) The Governor of the State shall be afforded the opportunity to review and transmit to the Secretary proposed modifications of such plans submitted.

(d) Such plans shall include provision for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes. In those States where a State board, department, or agency exists which is charged with the administration of State laws for vocational rehabilitation of physically handicapped persons, such plans shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under this Act.

(e) If such plans are in conformity with the provisions of this Act and reasonably appropriate and adequate to carry out its purposes, they shall be approved by the Secretary of Labor and due notice of such approval shall be given to the State agency.

SEC. 9. [29 U.S.C. 49h](a)(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under this Act. The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish guidance for the proper performance of audits. Such guidance shall include a review of fiscal controls and fund accounting procedures established by States under this section.

(2) At least once every two years, the State shall prepare or have prepared an independent financial and compliance audit of funds received under this Act.

(3) Each audit shall be conducted in accordance with applicable auditing standards set forth in the financial and compliance element of the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States.

(b)(1) The Comptroller General of the United States shall evaluate the expenditures by States of funds received under this Act in order to assure that expenditures are consistent with the provisions of this Act and to determine the effectiveness of the State in accomplishing the purposes of this Act. The Comptroller General shall conduct evaluations whenever determined necessary and shall periodically report to the Congress on the findings of such evaluations.

(2) Nothing in this Act shall be deemed to relieve the Inspector General of the Department of Labor of his responsibilities under the Inspector General Act.

(3) For the purpose of evaluating and reviewing programs established or provided for by this Act, the Comptroller General shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody, or control of the State.

(c) Each State shall repay to the United States amounts found not to have been expended in accordance with this Act. No such finding shall be made except after notice and opportunity for a fair hearing. The Secretary may offset such amounts against any other amount to which the recipient is or may be entitled under this Act.

SEC. 10. [29 U.S.C. 49i] (a) Each State shall keep records that are sufficient to permit the preparation of reports required by this Act and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully.

(b)(1) The Secretary may investigate such facts, conditions, practices, or other matters which the Secretary finds necessary to determine whether any State receiving funds under this Act or any official of such State has violated any provision of this Act.

(2)(A) In order to evaluate compliance with the provisions of this Act, the Secretary shall conduct investigations of the use of funds received by States under this Act.

(B) In order to insure compliance with the provisions of this Act, the Comptroller General of the United States may conduct investigations of the use of funds received under this Act by any State.

(3) In conducting any investigation under this Act, the Secretary or the Comptroller General of the United States may not request new compilation of information not readily available to such State.

(c) Each State receiving funds under this Act shall—

(1) make such reports concerning its operations and expenditures in such form and containing such information as shall be prescribed by the Secretary, and

(2) establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring, and evaluating purposes.

SEC. 11. [29 U.S.C. 49j] (a) The director shall establish a Federal Advisory Council composed of men and women representing employers and employees in equal numbers and the public for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution of such problems. Members of such council shall be selected from time to time in such manner as the director shall prescribe and shall serve without compensation, but when attending meetings of the council they shall be allowed necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law for civilian employees in the executive branch of the Government. The council shall have access to all files and records of the United States Employment Service. The director shall also require the organization of similar State advisory councils composed of men and women representing employers and employees in equal numbers and the public. Nothing in this section shall be construed to prohibit the Governor from carrying out functions of such State advisory council through the State job training coordinating council in accordance with section 122(c) of the Job Training Partnership Act.

(b) In carrying out the provisions of this Act the director is authorized and directed to provide for the giving of notice of strikes or lockouts to applicants before they are referred to employment.

SEC. 12. [29 U.S.C. 49k] The director, with the approval of the Secretary of Labor, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 13. [29 U.S.C. 49l] (a) The Secretary is authorized to establish performance standards for activities under this Act which shall take into account the differences in priorities reflected in State plans.

(b)(1) Nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee.

(2) No funds paid under this Act may be used by any State for advertising in newspapers for high paying jobs unless such State submits an annual report to the Secretary beginning in December 1984 concerning such advertising and the justifications therefor, and the justification may include that such jobs are part of a State industrial development effort.

SEC. 14. [29 U.S.C. 49l-1] There are authorized to be appropriated such sums as may be necessary to enable the Secretary to provide funds through reimburseable[3] agreements with the States to operate statistical programs which are essential for development of estimates of the gross national product and other national statistical series, including those related to employment and unemployment.

SEC. 15. [29 U.S.C. 49 note] This Act may be cited as the "Wagner-Peyser Act".

[*Internal References.*—Social Security Act §§901(c)(1)(A)(ii), (c)(1)(B)(iii) and (c)(4) cite "the Act of June 6, 1933, as amended". Footnotes referring to the Wagner-Peyser Act are at Social Security Act §403 catchline and at title IV, Part A (at §401) and Part D (at §451) and §§901(c)(1)(B)(iii) and (c)(4).]

---

[3] As in original. Probably should be "reimbursable".

P.L. 73-479, Approved June 27, 1934 (48 Stat. 1246)
National Housing Act[1]

HOUSING FOR ELDERLY PERSONS

SEC. 231. [12 U.S.C. 1715v] (a) The purpose of this section is to assist in relieving the shortage of housing for elderly persons and to increase the supply of rental housing for elderly persons.

For the purposes of this section—

(1) the term "housing" means eight or more new or rehabilitated living units, not less than 50 per centum of which are specially designed for the use and occupancy of elderly persons;

(2) the term "elderly person" means any person, married or single, who is sixty-two years of age or over; and

(3) the terms "mortgage", "mortgagee", "mortgagor", and "maturity date" shall have the meanings respectively set forth in section 207 of this Act.

(b) The Secretary is authorized to insure any mortgage (including advances on mortgages during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgages prior to the date of their execution or disbursement thereon.

* * * * * * *

(f) Notwithstanding any of the provisions of this section, the housing provided under this section may include family units which are specially designed for the use and occupancy of any person or family qualifying as a handicapped family as defined in section 202 of the Housing Act of 1959[2], and such special facilities as the Secretary deems adequate to serve handicapped families (as so defined). The Secretary may also prescribe procedures to secure to such families preference or priority of opportunity to rent the living units specially designed for their use and occupancy.

* * * * * * *

HOMEOWNERSHIP FOR LOWER INCOME FAMILIES

SEC. 235. [12 U.S.C. 1715z] (a)(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower-income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 2 of this Act covering such loan, advance of credit, or obligation has been granted to such institution.

---

[1] August 30, 1935 (P.L. 74-403, 49 Stat. 1011).
See P.L. 94-375, §2(h), with respect to exclusion of assistance from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act, in Vol. II, p. 585.

[2] P.L. 86-372 (73 Stat. 654), approved September 23, 1959. See Vol. II, p. 412.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 2 of this Act due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 2 of this Act which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed, under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

* * * * * * *

RENTAL AND COOPERATIVE HOUSING FOR LOWER INCOME FAMILIES

SEC. 236. [12 U.S.C. 1715z-1] (a) For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to morgagees[3] holding mortgages meeting the special requirements specified in this section.

* * * * * * *

(j) * * *

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

* * * * * * *

SPECIAL MORTGAGE INSURANCE ASSISTANCE

SEC. 237. [12 U.S.C. 1715z-2] (a) The purpose of this section is to help provide adequate housing for families of low and moderate income, including those who, for reasons of credit history, irregular income patterns caused by seasonal employment, or other factors, are unable to meet the credit requirements of the Secretary for the purchase of a single-family home financed by a mortgage insured under section 203, 220, 221, 234, or 235(j)(4), but who, through the incentive of homeownership and counseling assistance, appear to be able to achieve homeownership.

(b) The Secretary is authorized upon application by the mortgagee to insure under this section any mortgage meeting the requirements of this section.

* * * * * * *

[*Internal References.*— Social Security Act §§1612(b) and 1613(a) have footnotes referring to P.L. 73-479. P.L. 86-372, §202(c), (Vol. II, p. 413), cites §513(e)(2) and (f) through (j) and §202(d)(3) and (e) cite §231; P.L. 89-73, §203(b), (Vol. II, p. 462), cites §§231 and 232; P.L. 94-375, §2(h), (Vol. II, p. 585), cites the National Housing Act and P.L. 98-181, §221 (Vol. II, p. 708) cites §236.]

---

[3] As in original. Probably should be "mortgagees".

P.L. 75-162, Approved June 24, 1937 (50 Stat. 307)
Railroad Retirement Act of 1974

DEFINITIONS

SECTION 1. [45 U.S.C. 231] For the purposes of this Act—

* * * * * * *

(b)(1) The term "employee" means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however*, That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) on or after August 29, 1935.

(2) The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

* * * * * * *

(o) An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 2(b) and section 2(d) only, an individual shall be deemed also to have "a current connection with the railroad industry" if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For purposes of section 2(d) only, an individual shall be deemed to have a "current connection with the railroad industry" if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

* * * * * * *

ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. [45 U.S.C. 231a] (a)(1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained retirement age (as defined in section 216(l) of the Social Security Act)[1];

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

---

[1] P.L. 98-76, §106(a)(1), struck out "the age of sixty-five" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(l) of the Social Security Act)[2] when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(l) of the Social Security Act)[3]. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(l) of the Social Security Act)[4], his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1);

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however*, That in cases where an individual's annuity under subsection (a)(1) begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1).

---

[2] P.L. 98-76, §106(a)(2), struck out "calendar month that he or she is under age sixty-five" and substituted "of the first 36 months that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(l) of the Social Security Act)".

[3] P.L. 98-76, §106(b), struck out "the age of 65" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)". Executed as if §106(b) reads "strike out 'the age of sixty-five' ".

[4] P.L. 98-76, §106(b), struck out "the age of sixty-five years" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(l) of the Social Security Act)[5], or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(l) of the Social Security Act)[6] may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act)[7] when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity[8].

(3) For the purposes of this Act, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter[9]; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) began.

(4) The "divorced wife" (as defined in section 216(d) of the Social Security Act) of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(l) of the Social Security Act[10] and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act;

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 4 of this Act.

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

---

[5] P.L. 98-76, §106(c), struck out "the age of 65" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

[6] P.L. 98-76, §106(d)(1), struck out "the age of 65" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

[7] P.L. 98-76, §106(d)(2), struck out "calendar month that the spouse or divorced wife is under age 65" and substituted "of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act)".

[8] P.L. 98-76, §409(a), inserted ", except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity".

[9] P.L. 98-76, §415, struck out ", if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant were members of the same household, or such wife or husband was receiving regular contributions from such annuitant toward her or his support, or such annuitant has been ordered by any court to contribute to the support of such wife or husband".

[10] P.L. 98-76, §106(e), struck out "the age of 65" and substituted "retirement age (as defined in section 216(l) of the Social Security Act". As in original. No closing parenthesis.

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) began;

(ii) a widow (as defined in section 216(c) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216(e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or[11] (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death;

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees' death and (C) will not have remarried after the employee's death: *Provided, however*, That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in "employment" as defined in the Social Security Act[12]; and

(v) The[13] widow (as defined in section 216(c) of the Social Security Act), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3) and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(i) of this Act and an individual entitled to an annuity under section 2(d)(1)(ii) of this Act, and the reference in section 202(e)(3) and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(iii) or section 2(d)(1)(iv) of this Act, and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act shall include an individual entitled to an annuity under section 2(a)(1) of this Act.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision

---

[11] P.L. 98-76, §104(a), amended subparagraph (B) in its entirety.

[12] P.L. 98-76, §413(a), inserted ", but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in 'employment' as defined in the Social Security Act".

[13] As in original. Probably should be "the".

(1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school[14] student" and "elementary or secondary school[15]") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen[16] at a time when he is a full-time elementary or secondary school[17] student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[18] of the Social Security Act)[19] shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school[20] in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e)(1) No individual shall be entitled to an annuity under subsection (a)(1) until he shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1(a) (but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f)). As used in this subsection, the term "compensated service" shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State.

(2) An annuity under subsection (a)(1) shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person, or persons, by whom he was last employed: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) prior to attaining retirement age (as defined in section 216(l) of the Social Security Act)[21]: *Provided further*, That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) or supplemental annuity under subsection (b)(1) shall be paid with respect to any month in which an individual in receipt of an

---

[14] P.L. 98-76, §104(b)(1), inserted "elementary or secondary school".

[15] P.L. 98-76, §104(b)(2), struck out "educational institution" and substituted "elementary or secondary school".

[16] P.L. 98-76, §104(b)(3), struck out "twenty-two" and substituted "nineteen".

[17] See footnote 14.

[18] As in original. Probably should be "202(d)(7)(C)(i)".

[19] P.L. 98-76, §104(b)(4), struck out "degree from a four-year college or university" and substituted "diploma or equivalent certificate from a secondary school (as defined in §202(d)(7)(c)(i) of the Social Security Act)".

[20] See footnote 15.

[21] P.L. 98-76, §106(f), struck out "age sixty-five" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

annuity or supplemental annuity thereunder shall render compensated service to an employer or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue. Individuals receiving annuities under subsection (a)(1) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(l) of the Social Security Act)[22] and is paid more than $200 in earnings from employment or self-employment of any form: *Provided, however,* That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(l) of the Social Security Act)[23] shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed $2,400, the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $2,400, the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $200 of such excess, treating the last $100 or more of such excess as $200; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse or divorced wife under subsection (c) shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse or divorced wife under subsection (c) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however,* That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit

---

[22] P.L. 98-76, §106(g), struck out "age sixty-five" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

[23] P.L. 98-76, §106(g), struck out "age of sixty-five" and substituted "retirement age (as defined in section 216(l) of the Social Security Act)".

under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act.

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 3(a) of this Act for any month in which the annuity of such individual is reduced pursuant to section 3(m) of this Act. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 4(a) of this Act for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act.

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(g)(1) No annuity shall be paid to a survivor under subsection (d) with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of such Act: *Provided, however*, That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) shall report to the Board the receipt of excess earnings described in this subdivision.[24]

(h)[25] (2) The supplemental annuity provided an individual by subsection (b) shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however*, That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *Provided, however*, That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. [45 U.S.C. 231b] (a)(1) The annuity of an individual under section 2(a)(1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

---

[24] P.L. 98-76, §414(a)(1), struck out subdivision (1).
[25] P.L. 98-76, §414(a)(2), inserted "(h)".

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.[26]

(3) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.[27]

* * * * * * *

(f) * * *

(3) If for any month in which an annuity accrues and is payable under this Act the annuity to which an individual is entitled under this Act (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife[28] of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, the annuities of the individual and spouse[29] shall be increased proportionately to such total amount, or such additional amount: *Provided, however,* That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 2 of this Act shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 2(c) of this Act if the individual from whom the spouse's annuity under this Act would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216(e) of the Social Security Act; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 2 of this Act except a spouse who could qualify for an annuity under section 2(c) of this Act when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act which shall be considered shall be those to which the persons included in the computation are entitled.

* * * * * * *

---

[26] P.L. 98-76, §101(a)(1), amended subdivision (2) in its entirety.

[27] P.L. 98-76, §101(a)(2), added subdivision (3).

[28] P.L. 98-76, §405(a)(1), inserted "and divorced wife".

[29] P.L. 98-76, §405(a)(2), struck out "such annuity or annuities" and substituted "the annuities of the individual and spouse".

(i) [45 U.S.C. 231b] (1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of any individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.[30]

(j) The "average monthly compensation" shall be computed in the manner specified in section 3(b) of this Act, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924-1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however*, That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing[31] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954.[32] If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

---

[30] P.L. 98-76, §107(a), added subdivision (4).

* * * * * * *

LUMP-SUM PAYMENTS

Sec. 6. [45 U.S.C. 231e] * * *

(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore[33] be entitled to receive an annuity under section 2(d) of this Act for the month in which the employee's death occurred.[34]

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, surviving divorced wife, widower, child, or parent who would on proper application therefor be entitled to

---

[31] As in original. Possibly should be "determining".
[32] P.L. 98-76, §107(b), inserted this sentence.
[33] As in original. Should be "therefor".
[34] P.L. 98-76, §408, added this sentence.

receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 2(d) of this Act was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

* * * * * * *

POWERS AND DUTIES OF THE BOARD

SEC. 7. [45 U.S.C. 231f] * * *

(b) * * *

(7) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act, the Railroad Unemployment Insurance Act,,[35] the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act..[36] The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however*, That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

* * * * * * *

(d)(1) the Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 3(f)(3) of this Act, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includible in the computation of an annuity under section 3(f)(3) of this Act, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

---

[35] As in original. One comma should be stricken.

[36] As in original. One period should be stricken.

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864,[37] 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

* * * * * * *

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. [45 U.S.C. 231q] * * *

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

* * * * * * *

---

[37] P.L. 98-369, §2349(b)(2), struck out "1867,".

[*Internal References.*—Social Security Act §§205(c)(5)(D) and (i), 215(a)(1)(C)(ii)(I)(a), (a)(1)(C)(ii)(II), (a)(7)(A)(end), (d)(1)(C)(iii), and (d)(5)(mid) cite the Railroad Retirement Act of 1937, §202(t)(4)(E) cites the Railroad Retirement Act of 1937 and §5(k)(1) of such Act, §205(c)(5)(I) cites §5(k)(3) and §228(h)(1) cites §5(l), §§205(c)(5)(D), 215(a)(1)(C)(ii)(II), (a)(7)(A)(end), (d)(5)(mid), 226A(a)(1)(A)(i) and (a)(1)(B)(ii), 1840(b)(1), 1843(b)(end) and (d)(3)(B), 1870(b)(3), (b)(4) and (b)(end) and 1874(a) cite the Railroad Retirement Act of 1974; §202(t)(4)(E) cites the Railroad Retirement Act of 1974 and §18(2); §205(i) cites the Railroad Retirement Act of 1974 and §2; §202(l) cites §2 and §6(b); §205(o) cites §§2, 3(i) and 6(b); §§216(b)(3)(C), (c), (f) and (g) cite §2; §210(l)(4)(A) cites §3(i); §205(c)(5)(I) cites §7(b)(7); §§226(b)(2)(B) and (d) and 1842(g) cite §7(d); and §226(f) cites §7(d)(2)(ii). Social Security Act §228(h)(1) has a footnote referring to P.L. 75-162.]

P.L. 75-353, Approved August 24, 1937 (50 Stat. 754)
Act of August 24, 1937
[Unemployment Compensation]

AN ACT

To make available to each State which enacted in 1937 an approved unemployment-compensation law a portion of the proceeds from the Federal employers' tax in such State for the year 1936.

[42 U.S.C. 1104 note] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there is hereby authorized to be appropriated for payment to the unemployment fund of each State or Territory which was not certified by the Social Security Board under section 903 of the Social Security Act on December 31, 1936, but which enacted in the year 1937 an unemployment-compensation law approved by the Social Security Board under such section, an amount equal to 90 per centum of the proceeds of the tax paid on or before January 31, 1938, with respect to employment in such State or Territory during the calendar year 1936 under title IX of such Act. Out of the sums appropriated therefor, the Secretary of the Treasury shall pay such amount, through the Division of Disbursement of the Treasury Department, to each such State unemployment fund. The terms used in this Act shall have the same meaning as identical terms in title IX of the Social Security Act.

* * * * * * *

[*Internal Reference.*—Social Security Act §904(g) cites the Act of August 24, 1937 (50 Stat. 754).]

P.L. 75-412, Approved September 1, 1937 (50 Stat. 888)
United States Housing Act of 1937[1]

* * * * * * *

SEC. 3. [42 U.S.C. 1437a]

* * * * * * *

(b) When used in this Act:

(1) The term "lower income housing" means decent, safe, and sanitary dwellings assisted under this chapter. The term "public housing" means lower income housing, and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. When used in reference to public housing, the term "lower income housing project" or "project" means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family

---

[1] P.L. 93-383, §201(a), amended the United States Housing Act of 1937 in its entirety.

incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes[2]. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 520 of the Housing Act of 1949, taking into account the subsidy characteristics and types of programs to which such ceilings apply.[3]

(3) The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 423 of this title or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family, and (D) other single persons in circumstances described in regulations of the Secretary. In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D). In determining priority for admission to housing under this chapter, the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under clause (D). The term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this subsection, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with one or more persons determined under regulations of the Secretary to be essential to their care or well being. The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D).[4]

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture[5].

(5) The term "adjusted gross income" means the income which remains after excluding—

(A) $480 for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) $400 for any elderly family;

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any elderly family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed; and[6]

(D) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education.[7]

(6) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of lower income housing.

---

[2] P.L. 98-181, §206(b), inserted ", except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes".

[3] P.L. 98-479, §102(b)(1), added this sentence.

[4] P.L. 98-181, §202, added this sentence.

[5] P.L. 98-479, §102(b)(2), inserted ", in consultation with the Secretary of Agriculture".

[6] P.L. 98-479, §102(b)(3), amended subparagraph (C) in its entirety.

[7] P.L. 98-181, §206(c), amended paragraph (5) in its entirety.

(7) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes, bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States.

(8) The term "Secretary" means the Secretary of Housing and Urban Development.

* * * * * * *

SEC. 8.

* * * * * * *

(j)(1) [42 U.S.C. 1437f] The Secretary may enter into contracts to make assistance payments under this subsection to assist lower income families by making rental assistance payments on behalf of any such family which utilizes a manufactured home as its principal place of residence. Such payments may be made with respect to the rental of the real property on which there is located a manufactured home which is owned by any such family or with respect to the rental by such family of a manufactured home and the real property on which it is located. In carrying out this subsection, the Secretary may—

(A) enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make such assistance payments to the owners of such real property, or

(B) enter into such contracts directly with the owners of such real property.

(2)(A) A contract entered into pursuant to this paragraph shall establish the maximum monthly rent (including maintenance and management charges) which the owner is entitled to receive for the space on which a manufactured home is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of real property suitable for occupancy by families assisted under this paragraph.

(B) The amount of any monthly assistance payment with respect to any family which rents real property which is assisted under this paragraph, and on which is located a manufactured home which is owned by such family shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—

(i) the monthly payment made by such family to amortize the cost of purchasing the manufactured home;

(ii) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(iii) the maximum monthly rent permitted with respect to the real property which is rented by such family for the purpose of locating its manufactured home;

except that in no case may such assistance exceed the total amount of such maximum monthly rent.

(3)(A) Contracts entered into pursuant to this paragraph shall establish the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of a manufactured home and the real property on which it is located suitable for occupancy by families assisted under this paragraph, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent.

(B) The amount of any monthly assistance payment with respect to any family which rents a manufactured home and the real property on which it is located and which is assisted under this paragraph shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—

(i) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(ii) the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located.

(4) The provisions of subsection (c)(2) of this section shall apply to the adjustments of maximum monthly rents under this subsection.

(5) Each contract entered into under this subsection shall be for a term of not less than one month and not more than 180 months, except that in any case in which the manufactured home park is substantially rehabilitated or newly constructed, such term may not be less than 240 months, nor more than the maximum term for a manufactured home loan permitted under section 2(b) of the National Housing Act.

(6) The Secretary may carry out this subsection without regard to whether the manufactured home park is existing, substantially rehabilitated, or newly constructed.

(7) In the case of any substantially rehabilitated or newly constructed manufactured home park containing spaces with respect to which assistance is made under this subsection, the principal amount of the mortgage attributable to the rental spaces within the park may not exceed an amount established by the Secretary which is equal to or less than the limitation for manufactured home parks described in section 207(c)(3) of the National Housing Act, and the Secretary may increase such limitation in high cost areas in the manner described in such section.

(8) The Secretary may prescribe other terms and conditions which are necessary for the purpose of carrying out the provisions of this subsection and which are consistent with the purposes of this subsection.

(k) The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act, the Food Stamp Act of 1977, or title 38, United States Code. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

* * * * * * *

SEC. 9.

* * * * * * *

(b) [42 U.S.C. 1437g] The aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a public housing agency receiving annual contributions under this section shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

* * * * * * *

[*Internal References.*—Social Security Act §§1612(b) and 1613(a) have footnotes referring to P.L. 75-412. P.L. 89-73, §203(b)(5) (Vol. II, p. 462), P.L. 94-375, §2(h) (Vol. II, p. 585), and P.L. 98-181, §221 (Vol. II, p. 708) cite the United States Housing Act of 1937.]

P.L. 75-717, Approved June 25, 1938 (52 Stat. 1040)

Federal Food, Drug, and Cosmetic Act

* * * * * * *

SEC. 505. [21 U.S.C. 355]

* * * * * * *

(e) The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) the patent information prescribed by subsection (c) was not filed within thirty days after the receipt of written notice from the Secretary specifying the failure to file such information; or[1] (5)[2] that the application contains any untrue statement of a material fact: *Provided,* That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (k)[3] or to comply with the notice requirements of section 510(k)[4](2), or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

* * * * * * *

[*Internal Reference.*—Social Security Act §1862(c)(1)(C) cites §505(e) of the Federal Food, Drug, and Cosmetic Act.]

P.L. 75-722, Approved June 25, 1938 (52 Stat. 1094)
Railroad Unemployment Insurance Act

* * * * * * *

DISQUALIFYING CONDITIONS

SEC. 4. [45 U.S.C. 354] (a-1) There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social-insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

---

[1] P.L. 98-417, §102(a)(3)(B), added this paragraph (4).

[2] P.L. 98-417, §102(a)(3)(B), redesignated the former paragraph (4) as paragraph (5).

[3] P.L. 98-417, §102(b)(4), struck out "(j)" and substituted "(k)".

[4] See footnote 3.

(iii) if he is paid a separation allowance, any of the days in the period beginnng with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;

* * * * * * *

RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. [45 U.S.C. 361] (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as equals 0.5 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated.

(b) In addition to the other moneys herein provided for expenses necessary or incidental to administering this Act, there is hereby appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public[1], Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than $2,000,000, as the Board requests for the purpose of financing the costs of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

* * * * * * *

[*Internal Reference.*—Social Security Act §904(g) cites section 11(b) of the Railroad Unemployment Insurance Act.]

P.L. 76-379, Approved August 10, 1939 (53 Stat. 1360)

Social Security Act Amendments of 1939

* * * * * * *

SEC. 907. [42 U.S.C. 403 note] In addition to any other deductions made under section 203 of the Social Security Act, as amended, deductions shall be made from any primary insurance benefit or benefits to which an individual is entitled or from any other insurance benefit payable with respect to such individual's wages, until such deductions total 1 per centum of any wages paid him for services performed in 1939, and subsequent to his attaining age sixty-five, and 1 per centum of any wages paid him for services which constitute employment by virtue of subsection (o) of section 209 of the Social Security Act, as amended, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code have not been deducted by his employer from his wages or paid by such employer.

* * * * * * *

---

[1] As in original. Possibly should be "Public Law".

[*Internal Reference.*—20 CFR 404.501 cites §907 of P.L. 76-379.]

P.L. 78-410, Approved July 1, 1944 (58 Stat. 682)
Public Health Service Act

TITLE I—SHORT TITLE AND DEFINITIONS[1]

Page

Sec. 1. Short Title 245

TITLE II—ADMINISTRATION

Sec. 201. Public Health Service 245
Sec. 202. Organization 245

TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

Part A—Research and Investigation

Sec. 301. In General 245
Sec. 304. General Authority Respecting Research, Evaluations, and Demonstrations In Health Statistics, Health Services, and Health Care Technology Assessment 247
Sec. 305. National Center for Health Services Research 248
Sec. 306. National Center for Health Statistics 251
Sec. 309. Grants for A Council on Health Care Technology 251

Part B—Federal-State Cooperation

Sec. 314. Grants for Comprehensive Health Planning and Public Health Services 252

Part C—Hospitals, Medical Examinations, and Medical Care

Sec. 329. Migrant Health 255
Sec. 330. Community Health Centers 260
Sec. 332. Designation of Health Manpower Shortage Areas 266
Sec. 339. Home Health Services 266

Part H—Organ Transplants

Sec. 371. Assistance for Organ Procurement Organizations 268
Sec. 372. Organ Procurement and Transplantation Network 269

TITLE V—MISCELLANEOUS

Part C—Miscellaneous Provisions Relating to Alcohol Abuse and Alcoholism and Drug Abuse

Sec. 523. Confidentiality of Records 269

TITLE VI—ASSISTANCE FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

Sec. 604. State Plans 270

TITLE XIII—HEALTH MAINTENANCE ORGANIZATIONS

Sec. 1301. Requirements for Health Maintenance Organizations 272
Sec. 1302. Definitions 275
Sec. 1310. Employees' Health Benefits Plans 277
Sec. 1312. Continued Regulation of Health Maintenance Organizations.... 277

---

[1] Table of contents is not part of Act.

Page
Sec. 1318. Financial Disclosure 278
[Title XV Repealed.]

TITLE XVI—HEALTH RESOURCES DEVELOPMENT

Part C—General Provisions

Sec. 1621. Applications 279

TITLE I—SHORT TITLE AND DEFINITIONS

SHORT TITLE

SECTION 1. [42 U.S.C. 201 note] This Act may be cited as the "Public Health Service Act".

* * * * * * *

TITLE II—ADMINISTRATION

PUBLIC HEALTH SERVICE

SEC. 201. [42 U.S.C. 202] The Public Health Service in the Department of Health, Education, and Welfare shall be administered by the Surgeon General under the supervision and direction of the Secretary.

ORGANIZATION

SEC. 202.[2] [42 U.S.C. 203] The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and (4) the Bureau of State Services. The Surgeon General is authorized and directed to assign to the Office of the Surgeon General, to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time, abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Surgeon General may delegate to any officer or employee of the Service such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

* * * * * * *

TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

PART A—RESEARCH AND INVESTIGATION

IN GENERAL

SEC. 301. [42 U.S.C. 241] (a) The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

---

[2] The organizational units specified in this section were all abolished as statutory entities by Reorganization Plan No. 3 of 1966.

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects[3] and make, upon recommendation of the advisory council to the appropriate entity of the Department[4], grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research[5];

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under title 10, United States Code, sections 2353 and 2354, except that determination, approval, and certification required thereby shall be by the Secretary of Health, Education, and Welfare; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers[6] necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b)(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

---

[3] P.L. 99-570, §4021(b)(2), struck out "or, in the case of mental health projects, by the National Advisory Mental Health Council;".

[4] P.L. 99-570, §4021(b)(2), struck out "or the National Advisory Mental Health Council".

[5] P.L. 99-158, §3(a)(5)(A), struck out "National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council, and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year" and substituted "advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research".

[6] P.L. 99-158, §3(a)(5)(B), struck out "recommendations of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendation of the National Advisory Dental Research Council, such additional means as he deems" and substituted "recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers". Executed as though §3(a)(5)(B) struck out "recommendation of the National Advisory Health Council".

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health, Education, and Welfare and shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish an annual report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health, Education, and Welfare for the Secretary, or

(II) from an entity within the Department of Health, Education, and Welfare to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.[7]

* * * * * * *

GENERAL AUTHORITY RESPECTING RESEARCH, EVALUATIONS, AND DEMONSTRATIONS IN HEALTH STATISTICS, HEALTH SERVICES, AND HEALTH CARE TECHNOLOGY ASSESSMENT[8]

SEC. 304. [42 U.S.C. 242b]

* * * * * * *

(d)(1) The Secretary, with the advice and assistance of the National Academy of Sciences (acting through the Institute of Medicine and other appropriate units), shall, in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 308(i)(2), an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary shall, to the extent feasible—

---

[7] P.L. 99-660, §104, added subsection (c).

[8] P.L. 98-551, §5(c)(4), struck out "AND HEALTH CARE TECHNOLOGY" and substituted ", AND HEALTH CARE TECHNOLOGY ASSESSMENT".

(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

(B) identify each such disease and adverse effect on humans and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

(C) identify (on a national, regional, or other geographical basis) the source or sources of such pollutants and conditions and estimate the portion of each pollutant and the extent of each condition which can be traced to a specific type of source;

(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon the incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

* * * * * * *

(4) For purposes of paragraph (1), the term "health costs of pollution and other environmental conditions" means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such diseases and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs.

NATIONAL CENTER FOR HEALTH SERVICES RESEARCH

Sec. 305. [42 U.S.C. 242c] (a) There is established in the Department of Health and Human Services the National Center for Health Services Research and Health Care Technology Assessment[9] (hereinafter in this section referred to as the "Center") which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

(b) In carrying out section 304(a), the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (which may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act and the Social Security Amendments of 1967[10]) respecting—

(1) the accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems;

(2) the supply and distribution, education and training, quality, utilization, organization, and costs of health manpower;

(3) the design, utilization, organization, and cost of facilities and equipment,[11]

(4) the role of market forces in the health care system and the appropriate role they may play in restraining cost increases and improving the availability and quality of care; and[12]

---

[9] P.L. 98-551, §5(a)(1), inserted "and Health Care Technology Assessment".
[10] P.L. 90-248.
[11] P.L. 98-551, §5(a)(2), struck out "and".
[12] P.L. 98-551, §5(a)(2), struck out the period and substituted "; and".

(5) the safety, efficacy, effectiveness, cost effectiveness, economic, and social impacts of health care technologies.[13]

No grant or contract shall be made under this subsection for the purpose of funding clinical research that is directly related to determining the cause of any disease or disorder or clinical research that is directly and principally designed to evaluate the efficacy of any therapeutic, diagnostic, or preventive health measure.

(c)(1)[14] The Secretary shall afford appropriate consideration to requests of—

(A)[15] State, regional, and local health planning and health agencies,

(B)[16] public and private entities and individuals engaged in the delivery of health care, and

(C)[17] other persons concerned with health services,

to have the Center or other units of the Department of Health and Human Services undertake research, evaluations, and demonstrations respecting specific aspects of the matters referred to in subsection (b).

(2) In carrying out this section, the Secretary shall assist State and local health agencies through a user liaison program and a technical assistance program.[18]

(d)(1) The Secretary shall, by grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, evaluations, training, policy analysis,,[19] and demonstrations respecting the matters referred to in subsection (b). To the extent practicable, the Secretary shall approve, in accordance with the requirements of this subsection and section 308, a number of applications for grants and contracts under this subsection which will result in at least three of such centers (including two national special emphasis centers, one of which (to be designated as the Health Care Management Center) shall focus on the improvement of management and organization in the health field, the training and retraining of administrators of health care enterprises, and the development of leaders, planners, and policy analysts in the health field; and one of which (to be designated as the Health Services Policy Analysis Center) shall focus on the development and evaluation of national policies with respect to health services, including the development of health maintenance organizations and other forms of group practice, with a view toward improving the efficiencies of the health services delivery system) being operational in each fiscal year.

(2)(A) No grant or contract may be made under this subsection for planning and establishing a center unless the Secretary determines that when it is operational it will meet the requirements listed in subparagraph (B) and no payment shall be made under a grant or contract for operation of a center unless the center meets such requirements.

(B) The requirements referred to in subparagraph (A) are as follows:

(i) There shall be a full-time director of the center who possesses a demonstrated capacity for sustained productivity and leadership in health services research, demonstrations, and evaluations, and there shall be such additional full-time professional staff as may be appropriate.

(ii) The staff of the center shall represent all relevant disciplines.

(iii) The center shall (I) be located within an established academic or research institution with departments and resources appropriate to the programs of the center, and (II) have working relationships with health service delivery systems where experiments in health services may be initiated and evaluated.

(iv) The center shall select problems in health services for research, evaluations, policy analysis, and demonstrations on the basis of (I) their regional or national importance, (II) the unique potential for definitive research on the problem, and (III) opportunities for local application of the research findings.

(v) Such additional requirements as the Secretary may by regulation prescribe.

(e)(1) The Center shall advise the Secretary respecting health care technology issues and make recommendations with respect to whether specific health care technologies should be reimbursable under federally financed health programs.

(2) In making recommendations respecting health care technologies, the Center shall consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness and appropriate uses of the technology.

(3) In carrying out its responsibilities under this section respecting health care technologies, the Center shall cooperate and consult with the National Institutes of

---

[13] P.L. 98-551, §5(a)(2), added paragraph (5).
[14] P.L. 98-551, §6(2), inserted "(1)".
[15] P.L. 98-551, §6(1), redesignated paragraph (1) as subparagraph (A).
[16] P.L. 98-551, §6(1), redesignated paragraph (2) as subparagraph (B).
[17] P.L. 98-551, §6(1), redesignated paragraph (3) as subparagraph (C).
[18] P.L. 98-551, §6(3), added this paragraph (2).
[19] As in original. One comma should be stricken.

Health, the Food and Drug Administration, and any other interested Federal departments or agencies.[20]

(f)(1) The Secretary, acting through the Center, shall undertake and support (by grant or contract) research regarding technology diffusion, methods to assess health care technology, and specific health care technologies.

(2) Any grant or contract under paragraph (1), the direct cost of which will exceed $50,000, may be made or entered into only after consultation with the National Advisory Council on Health Care Technology Assessment.[21]

(g)(1) There is established the National Advisory Council on Health Care Technology Assessment (hereinafter in this section referred to as the "Council"). The Council shall advise the Secretary and the Director of the Center with respect to the performance of the health care technology assessment functions prescribed by this section. The Council shall assist the Director in developing criteria and methods to be used by the Center in making health care technology coverage recommendations.

(2) The Council shall consist of—

(A) the Director of the National Institutes of Health, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the head of the Centers for Disease Control, the head of the Health Care Financing Administration, and such other Federal officials as the Secretary may specify, who shall be ex officio members, and

(B) twelve voting members appointed by the Secretary.

(3) The Secretary shall make appointments to the Council as follows:

(A) The Secretary shall appoint six members of the Council from individuals who are distinguished in the fields of medicine, engineering, and science (including social science) and shall appoint four members from individuals who are distinguished in the fields of law, ethics, economics, and management. Of the members appointed under this subparagraph—

(i) at least two shall be physicians,

(ii) two shall be selected from individuals who represent business entities engaged in development or production of medical technology,

(iii) one shall be selected from individuals who represent hospital administrators, and

(iv) one shall be selected from individuals who represent health insurance companies or self-insured employers.

(B) The Secretary shall appoint two members from members of the general public who represent the interest of consumers of health care.

(4)(A) Each appointed member of the Council shall be appointed for a term of three years, except that—

(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(ii) of the members first appointed after the date of the enactment of this subsection, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may be appointed for additional terms and may serve after the expiration of their terms until their successors have taken office.

(B) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code[22], for persons in the Government service employed intermittently.

(5) The Council shall annually elect one of its appointed members to serve as Chairman until the next election.

(6) The Council shall meet at the call of the Chairman, but not less often than three times a year.

(7) The Director of the Center shall (A) designate a member of the staff of the Center to act as Executive Secretary of the Council, and (B) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.[23]

---

[20] P.L. 98-551, §5(a)(3), added this subsection.
[21] See footnote 20.
[22] See Vol. II, p. 65.
[23] See footnote 20.

(h) In each fiscal year, seven and one-half percent of the amount made available under section 2313[24] for such fiscal year for evaluations shall be made available to the Assistant Secretary for Health to conduct or support (by both grants and contracts) through the Center, evaluations of health services and health care technology which evaluations are not being conducted or supported under this section or section 304.[25] In administering this subsection, the Secretary shall assure that the amount to be made available in any fiscal year is seven and one-half percent of the maximum amount authorized to be made available under section 2313[26] in such fiscal year.[27]

(i)[28] The authority of the Secretary under section 304(b) shall be available to him with respect to the undertaking and support of projects under[29] this section.

NATIONAL CENTER FOR HEALTH STATISTICS

Sec. 306. [42 U.S.C. 242k] * * *

(e) For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection and other activities carried out under the System; and

(4) review the statistical activities of the Department of Health and Human Services to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system produce uniform and timely data and assure appropriate access to such data.

* * * * * * *

GRANTS FOR A[30] COUNCIL ON HEALTH CARE TECHNOLOGY[31]

Sec. 309. [42 U.S.C. 242n] (a)(1) In accordance with this section, the Secretary shall make grants for the planning, development, establishment, and operation of a council on health care technology[32].

(2)(A)(i)[33] The Secretary shall make an initial grant under paragraph (1) for the planning, development, and establishment of the council. The amount of an initial grant[34] may not exceed $500,000 and may be made for not more than two-thirds of the cost of the planning, development, and establishment of the council[35].

(ii) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application for an initial grant under paragraph (1). If the Academy submits an acceptable application, the Secretary shall make the initial grant to the Academy. If the Academy does not submit an acceptable application for an initial grant under paragraph (1), the Secretary shall request one or more appropriate nonprofit private entities to submit an application for an initial grant under paragraph (1) and shall make a grant to the entity which submits the best acceptable application.[36]

(B) The Secretary may not make a grant for the operation of the council[37] unless the application submitted to the Secretary for the grant contains written assurances from the applicant that the applicant will expend from non-Federal sources for the operation of the council[38] an amount equal to at least twice the amount of the grant applied for.

---

[24] P.L. 99-660, §311(b)(2), struck out "2113" and substituted "2313".

[25] See footnote 20.

[26] See footnote 24.

[27] P.L. 99-117, §6, added this sentence.

[28] P.L. 98-551, §5(a)(3), redesignated the former subsection (e) as subsection (i).

[29] P.L. 98-551, §5(b), struck out "subsections (b), (c), and (d) of".

[30] P.L. 99-117, §8(a)(1), inserted "GRANTS FOR A".

[31] P.L. 98-551, §8, amended §309 in its entirety.

[32] P.L. 99-117, §8(a)(2), struck out "Council on Health Care Technology. The Council shall comply with the provisions of this section" and substituted "council on health care technology".

[33] P.L. 99-117, §8(a)(3), inserted "(i)".

[34] P.L. 99-117, §8(a)(4), struck out "to the National Academy of Sciences for the planning, development, and establishment of the Council with the membership prescribed by subsection (d)(1). The amount of such grant" and substituted "for the planning, development, and establishment of the council. The amount of an initial grant".

[35] P.L. 99-117, §8(a)(9), struck out "Council" and substituted "council".

[36] P.L. 99-117, §8(a)(5), added clause (ii).

[37] See footnote 35.

[38] See footnote 35.

(b) The purposes of the council[39] shall include—

(1) promoting the development and application of appropriate health care technology assessments; and

(2) the review of existing health care technologies in order to identify obsolete or inappropriately used health care technologies.

(c)(1) In order to qualify for a grant under this section for the operation of the council, the applicant must demonstrate that it has the capability to, and that under the grant it will[40]—

(A) serve as a clearinghouse for information on health care technologies and health care technology assessment;

(B) collect and analyze data concerning specific health care technologies;

(C) identify needs in the assessment of specific health care technologies and research on assessment methodologies;

(D) develop and evaluate criteria and methodologies for health care technology assessment;

(E) promote education, training, and technical assistance in the use of health care technology assessment methodologies and results; and

(F) stimulate, coordinate, and commission assessments of health care technologies.

(2) No funds from any grant made by the Secretary under this section for the planning, development, and establishment of the council[41] may be used to conduct any assessment of a health care technology.

(d) In order to qualify for an initial grant under this section to plan, develop, and establish the council under this section, the applicant must assure that the council will be composed of at least 10 members—

(1) each of whom has education, training, experience, or expertise relating to the quality and cost effectiveness of health care technologies, and

(2) who, as a group, provide representation of organizations of health professionals, hospitals, and other health care providers, health care insurers, employers, consumers, and manufacturers of products for health care.[42]

(e) As a condition for receiving a grant under this section, the applicant must agree to submit to the Secretary an annual report on the council's activities under the grant. The Secretary shall provide for timely transmittal of a copy of each such report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.[43]

(f)[44] No grant may be made under this section unless an application is submitted to the Secretary in such form and containing such information as the Secretary shall prescribe.[45]

* * * * * * *

PART B—FEDERAL-STATE COOPERATION

* * * * * * *

GRANTS FOR COMPREHENSIVE HEALTH PLANNING AND PUBLIC HEALTH SERVICES

Grants to States for Comprehensive State Health Planning

SEC. 314. [42 U.S.C. 246] (a)(1) AUTHORIZATION.—In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

---

[39] See footnote 35.

[40] P.L. 99-117, §8(a)(6), struck out "The Council shall" and substituted "In order to qualify for a grant under this section for the operation of the council, the applicant must demonstrate that it has the capability to, and that under the grant it will".

[41] See footnote 35.

[42] P.L. 99-117, §8(a)(7), amended subsection (d) in its entirety.

[43] P.L. 99-117, §8(a)(7), added subsection (e).

[44] P.L. 99-117, §8(a)(7), struck out the former subsection (f), and §8(a)(8), redesignated the former subsection (h) as subsection (f).

[45] P.L. 99-117, §8(a)(7), struck out subsection (g).

(2) State plans for comprehensive state health planning.—In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Veterans' Administration, the individual whom the Administrator of Veterans' Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Administration which are located in such State) and nongovernmental organizations and groups concerned with health (including representation of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F)[46] provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) State allotments.—From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

---

[46] Sec. 208(a)(3) of P.L. 91-648 (42 U.S.C. 4728) transferred to the U.S. Civil Service Commission all functions, powers, and duties of the Secretary under any law applicable to a grant program which requires the establishment and maintenance of personnel standards on a merit basis with respect to the program.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) PAYMENTS TO STATES.—From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The "Federal share" for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum, of such cost.

Project Grants for Areawide Health Planning

(b)(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a), project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

* * * * * * *

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

* * * * * * *

MIGRANT HEALTH

SEC. 329. [42 U.S.C. 254b] (a) For purposes of this section:

(1) The term "migrant health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(A) primary health services,

(B) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(C) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(D) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(E) as may be appropriate for particular centers (as determined by the centers), infectious and parasitic disease screening and control,

(F) as may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure, and

(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals,

for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves (referred to in this section as a "catchment area") and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves.

(2) The term "migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last twenty-four months, and who establishes for the purposes of such employment a temporary abode.

(3) The term "seasonal agricultural workers[47]" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term "agriculture" means farming in all its branches, including—

(A) cultivation and tillage of the soil,

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

---

[47] As in original. Possibly should be "worker".

(5) The term "high impact area" means a health service area or other area which has not less than four thousand migratory agricultural workers and seasonal agricultural workers residing within its boundaries for more than two months in any calendar year. In computing the number of workers residing in an area, there shall be included as workers the members of the families of such workers.

(6) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(7) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services; and

(L) health education services (including nutrition education).

(b)(1) The Secretary shall assign to high impact areas and any other areas (where appropriate) priorities for the provision of assistance under this section to projects and programs in such areas. The highest priorities for such assistance shall be assigned to areas where the Secretary determines the greatest need exists.

(2) No application for a grant under subsection (c) or (d) for a project in an area which has no migratory agricultural workers may be approved unless grants have been provided for all approved applications under such subsections for projects in areas with migratory agricultural workers.

(c)(1)(A) The Secretary may, in accordance with the priorities assigned under subsection (b)(1), make grants to public and nonprofit private entities for projects to plan and develop migrant health centers which will serve migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in high impact areas. A project for which a grant may be made under this subparagraph may include the cost of the acquisition and modernization of existing buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of providing training related to the management of migrant health center programs, and shall include—

(i) an assessment of the need that the workers (and the members of the families of such workers) proposed to be served by the migrant health center for which the project is undertaken have for primary health services, supplemental health services, and environmental health services;

(ii) the design of a migrant health center program for such workers and the members of their families, based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project.

(B) The Secretary may make grants to or enter into contracts with public and nonprofit private entities for projects to plan and develop programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and their families.

Any such program may include the acquisition and modernization of existing buildings and providing training related to the management of programs assisted under this subparagraph.

(2) Not more than two grants may be made under paragraph (1)(A) for the same project, and if a grant or contract is made or entered into under paragraph (1)(B) for a project, no other grant or contract under that paragraph may be made or entered into for the project.

(3) The amount of any grant made under paragraph (1) for any project shall be determined by the Secretary.

(d)(1)(A) The Secretary may, in accordance with priorities assigned under subsection (b)(1), make grants for the costs of operation of public and nonprofit private migrant health centers in high impact areas.

(B) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects for the operation of programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and the members of their families.

Any such program may include the acquisition and modernization of existing buildings and providing training related to the management of programs assisted under this subparagraph.

(C) The Secretary may make grants to migrant health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (f)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition and modernization of existing buildings and providing training related to the management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) may include the costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of repaying loans made by the Farmers Home Administration for buildings[48]; and the costs for which a grant or contract may be made under paragraph (1) may include the costs of providing training related to the provision of primary health services, supplemental health services, and environmental health services, and to the management of migrant health center programs.

(3) Not more than two grants may be made under paragraph (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) the State, local, and other funds, and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subparagraph (D) or (E) of subsection (a)(1) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

---

[48] P.L. 99-280, §7, inserted "and the costs of repaying loans made by the Farmers Home Administration for buildings".

(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center (I) to expand and improve its services, (II) to increase the number of persons (eligible under subsection (a) to receive services from such a center) it is able to serve, (III) to construct and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e) The Secretary may enter into contracts with public and private entities to—

(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

(2) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental health hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.

(f)(1) No grant may be made under subsection (c) or (d) and no contract may be entered into under subsection (c)(1)(B), (d)(1)(B), or (e) unless an application therefore[49] is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant or contract which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (sections 276a to 276a-5 of Title 40, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 276c of Title 40.

(2) An application for a grant under subparagraph (A) of subsection (d)(1) for a migrant health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

---

[49] As in original. Possibly should be "therefor".

In considering an application for a grant under subparagraph (A) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) The Secretary may not approve an application for a grant under subsection (d)(1)(A) unless the Secretary determines that the entity for which the application is submitted is a migrant health center (within the meaning of subsection (a)(1)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations of the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of the Social Security Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation; and

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

For purposes of subparagraph (G) and subsection (h)(4), the term "public center" means a migrant health center funded (or to be funded) through a grant under this section to a public agency.

(4) In considering applications for grants and contracts under subsection (c) or (d)(1)(B), the Secretary shall give priority to applications submitted by community-based organizations which are representative of the populations to be served through the projects, programs, or centers to be assisted by such grants or contracts.

(5) The Secretary, in making a grant under this section to a migrant health center for the provision of environmental health services described in subsection (a)(1)(D), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) Contracts may be entered into under this section without regard to section 529 of Title 31 and section 5 of Title 41.

(g)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any migrant health center or to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a migrant health center, and in meeting the requirements of subsection (f)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(h)(1) For the purposes of subsections (c), (d), and (e), there are authorized to be appropriated $43,000,000 for the fiscal year ending September 30, 1982, $47,500,000 for the fiscal year ending September 30, 1983,[50] $51,000,000 for the fiscal year ending September 30, 1984, $45,400,000 for fiscal year 1987 and $45,400,000 for fiscal year 1988[51]. The Secretary may not obligate for grants and contracts under subsection (c)(1) in any fiscal year an amount which exceeds 2 per centum of the funds appropriated under this paragraph for that fiscal year, the Secretary may not obligate for grants under subsection (d)(1)(C) in any fiscal year an amount which exceeds 5 per centum of such funds, and the Secretary may not obligate for contracts under subsection (e) in any fiscal year an amount which exceeds 10 per centum of such funds.

(2) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (f)(3)) the governing boards of which (as described in subsection (f)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

COMMUNITY HEALTH CENTERS

SEC. 330. [42 U.S.C. 254c] (a) For purposes of this section, the term "community health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(1) primarily health services,

---

[50] P.L. 99-280, §6, struck out "and".

[51] P.L. 99-280, §6, inserted ", $45,400,000 for fiscal year 1987 and $45,400,000 for fiscal year 1988".

(2) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(3) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(4) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health, and

(5) information on the availability and proper use of health services,

for all residents of the area it serves (referred to in this section as a "catchment area").

(b) For purposes of this section:

(1) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(2) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and

(M) services which promote and facilitate optimal use of primary health services and the services referred to in the preceding subparagraphs of this paragraph, including, if a substantial number of the individuals in the population served by a community health center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals.

(3) The term "medical underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.[52]

(4) In carrying out paragraph (3), the Secretary shall by regulation prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(A) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(B) include infant mortality in an area or population group, other factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.[53]

(5) The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(A) the chief executive officer of such State;

---

[52] P.L. 99-280, §2(1), struck out 4 sentences.

[53] P.L. 99-280, §2(2), added paragraph (4).

(B) local officials in such State; and

(C) the State organization, if any, which represents a majority of community health centers in such State.[54]

(6) The Secretary may designate a medically underserved population that does not meet the criteria established under paragraph (4) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.[55]

(c)(1) The Secretary may make grants to public and nonprofit private entities for projects to plan and develop community health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may include the cost of the acquisition and modernization of existing buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(A) an assessment of the need that the population proposed to be served by the community health center for which the project is undertaken has for primary health services, supplemental health services, and environmental health services;

(B) the design of a community health center program for such population based on such assessment;

(C) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(D) initiation and encouragement of continuing community involvement in the development and operation of the project.

(2) Not more than two grants may be made under this subsection for the same project.

(3) The amount of any grant made under this subsection for any project shall be determined by the Secretary.

(d)(1)(A) The Secretary may make grants for the costs of operation of public and nonprofit private community health centers which serve medically underserved populations.

(B) The Secretary may make grants for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which he is unable to make each of the determinations required by subsection (e)(3).

(C) The Secretary may make grants to community health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (e)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition and modernization of existing buildings and providing training related to management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) or (1)(B) may include the costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying interest on, loans), the costs of repaying loans made by the Farmers Home Administration for buildings, and the costs of providing training related to the provision of primary health services, supplemental health services and environmental health services, and to the management of community health center programs.

(3) Not more than two grants may be made under paragraph (1)(B) or (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under paragraph (1) (other than subparagraph (C)) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) the State, local, and other funds, and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subsection (a)(4) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (L), or (M) of subsection (b)(2), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

---

[54] P.L. 99-280, §2(2), added paragraph (5).

[55] P.L. 99-280, §2(2), added paragraph (6).

(B) Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such a center) it is able to serve, (III) to construct and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e)(1) No grant may be made under subsection (c) or (d) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(2) An application for a grant under subparagraph (A) or (B) of subsection (d)(1) for a community health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) and in subparagraphs (B), (F), (L), and (M) of subsection (b)(2),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

Such an application shall also include a demonstration by the applicant that the area or a population group to be served by the applicant has a shortage of personal health services and that the center will be located so that it will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health services described in subsection (a) or (b) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) Except as provided in subsection (d)(1)(B), the Secretary may not approve an application for a grant under paragraph (1)(A) or (1)(B) of subsection (d) unless the Secretary determines that the entity for which the application is submitted is a community health center (within the meaning of subsection (a)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations prescribed by the Secretary, or (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social grouping, and available transportation;

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and

(K) the center, in accordance with regulations prescribed by the Secretary, has developed an ongoing referral relationship with one or more hospitals.

For purposes of subparagraph (G) and subsection (g)(4), the term "public center" means a community health center funded (or to be funded) through a grant under this section to a public agency.

(4) The Secretary shall approve applications for grants under paragraph (1)(A) or (1)(B) of subsection (d) for community health centers which—

(A) have not received a previous grant under such paragraph, or

(B) have applied for such a grant to expand their services,

in such a manner that the ratio of the medical underserved populations in rural areas which may be expected to use the services provided by such centers to the medical underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(f)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other non-financial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requirements of subsection (e)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(g)(1) There are authorized to be appropriated for payments pursuant to grants under this section $400,000,000 for fiscal year 1987 and $400,000,000 for fiscal year 1988.[56]

(2) The Secretary may not in any fiscal year—

(A) expend for grants to serve medically underserved populations designated under subsection (b)(6) an amount which exceeds 5 percent of the funds appropriated under this section for that fiscal year; and

(B) expend for grants under subsection (d)(1)(C) an amount which exceeds 5 percent of the funds appropriated under this section for that fiscal year.[57]

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (e)(3)) the governing boards of which (as described in subsection (e)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(h) In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new community health centers;

(3) review and comment upon annual program plans and budgets of community health centers, including comments upon allocations of health care resources in the State;

(4) assist community health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of community health centers; and

---

[56] P.L. 99-280, §4, amended paragraph (1) in its entirety.

[57] P.L. 99-280, §4, amended paragraph (2) in its entirety.

(5) share information and data relevant to the operation of new and existing community health centers.[58]

(i)[59] (1) Each entity which receives a grant under subsection (d) shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Each entity which receives a grant under subsection (d) shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Each entity which is required to establish and maintain records or to provide for an audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefor. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection to a community health center.

* * * * * * *

DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

SEC. 332. [42 U.S.C. 254e] (a)(1) For purposes of this subpart the term "health manpower shortage area" means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage.

* * * * * * *

HOME HEALTH SERVICES

SEC. 339. [42 U.S.C. 255] (a)(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

---

[58] P.L. 99-280, §3, a [illegible] ubsection (h).
[59] P.L. 99-280, §3, re [illegible] the former subsection (h) as subsection (i).

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983,[60] September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987[61].

(b)(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983,[62] September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987[63].

(c) The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) (as such subsections are in effect on the day after the date of enactment of the Orphan Drug Act[64]); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) For purposes of this section, the term "home health services" has the meaning prescribed for the term by section 1861(m) of the Social Security Act.

* * * * * * *

---

[60] P.L. 98-555, §6(a), struck out "and".

[61] P.L. 98-555, §6(a), inserted ", September 30, 1985, September 30, 1986, and September 30, 1987".

[62] P.L. 98-555, §6(b), struck out "and".

[63] P.L. 98-555, §6(b), inserted ", September 30, 1985, September 30, 1986, and September 30, 1987".

[64] January 4, 1983 (P.L. 97-414; 96 Stat. 2049).

PART H—ORGAN TRANSPLANTS

ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS[65]

SEC. 371. [42 U.S.C. 273] (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b).

(3) In making grants under paragraphs (1) and (2), the Secretary shall—

(A) take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act[66], and

(B) give special consideration to applications which cover geographical areas which are not adequately served by organ procurement organizations.

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(D),

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

---

[65] P.L. 98-507, §201, amended §371 in its entirety.

[66] See P.L. 98-507, Vol. II, p. 733.

(H) participate in the Organ Procurement Transplantation Network established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors, and

(J) evaluate annually the effectiveness of the organiation in acquiring potentially available organs.

* * * * * * *

ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK[67]

SEC. 372. [42 U.S.C. 274] (a) The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b)(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

(B) have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 371), transplant centers, voluntary health associations, and the general public.

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(C) assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations,

(D) adopt and use standards of quality for the acquisition and transportation of donated organs,

(E) prepare and distribute, on a regionalized basis, samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatability[68] of such individuals with organ donors,

(F) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(G) provide information to physicians and other health professionals regarding organ donation, and

(H) collect, analyze, and publish data concerning organ donation and transplants.

* * * * * * *

TITLE V—MISCELLANEOUS

PART C—MISCELLANEOUS PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM AND DRUG ABUSE

* * * * * * *

CONFIDENTIALITY OF RECORDS[69]

SEC. 523. [42 U.S.C. 290dd-3] (a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

---

[67] P.L. 98-507, §201, amended §372 in its entirety.

[68] As in original. Should be "compatibility".

[69] P.L. 98-24, §2(b)(13), redesignated and transferred the former §333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 to part C of title V of the Public Health Service Act.

(b)(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.[70]

(f) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

* * * * * * *

TITLE VI—ASSISTANCE FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

* * * * * * *

STATE PLANS

Sec. 604. [42 U.S.C. 291d] (a) Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) will have authority to carry out such plan in conformity with this part;

---

[70] P.L. 99-401, §106(a), added this sentence.

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 603 and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 601(a) or (b) in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) and regulations prescribed under section 603 and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4);

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 603, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8)[71] provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10);

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

---

[71] See footnote 46.

(13) effective July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of, physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

(b) The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a). If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a), the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modification complies with the provisions of such subsection, the Surgeon General shall there upon approve such plan or modification.

* * * * * * *

TITLE XIII—HEALTH MAINTENANCE ORGANIZATIONS

REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS

SEC. 1301. [42 U.S.C. 300e] (a) For purposes of this title, the term "health maintenance organization" means a legal entity which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b), and (2) is organized and operated in the manner prescribed by subsection (c).

(b) A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this title, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. A health maintenance organization may include a health service, defined as a supplemental health service by section 1302(2), in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 1310(d)) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the

provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this title referred to as "supplemental health services payments") as the health maintenance organization may require in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 1302(2)). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 1310(d)) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), the services of a physician which are provided as basic health services shall be provided through—

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B) Subparagraph (A) does not apply to the provision of the services of a physician—

(i) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(ii) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(C) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require, but only to the extent that such requirements are designed to insure the delivery of quality health care services and sound fiscal management.

(D) For purposes of this paragraph the term "health professional" means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members with reasonable promptness and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week, except that a health maintenance organization which has a service area located wholly in a nonmetropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency health care service and if there is an insufficient number of providers of that basic health service within the service area who will provide such service to members of the health maintenance organization. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources.

(c) Each health maintenance organization shall—

(1)(A) have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary, and (B) have administrative and managerial arrangements satisfactory to the Secretary;

(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may (A) obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year, (B) obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization, (C) obtain insurance or make other arrangements for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year, and (D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions;

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary;

(4) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(5)(A) in the case of a private health maintenance organization, be organized in such a manner that assures that (i) at least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (ii) there will be equitable representation on such body of members from medically underserved populations served by the organization, and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization;

(6) be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

(7) have organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians and other health professionals of the process followed in the provision of health services;

(8) adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization—

(A) a contractual arrangement with any hospital that is regularly used by the members of such organization prohibiting such hospital from holding any such member liable for payment of any fees which are the legal obligation of such organization;

(B) insolvency insurance, acceptable to the Secretary;

(C) adequate financial reserve, acceptable to the Secretary; and

(D) other arrangements, acceptable to the Secretary, to protect members,

except that the requirements of this paragraph shall not apply to a health maintenance organization if applicable State law provides the members of such organization with protection from liability for payment of any fees which are the legal obligation of such organization; and

(9) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization

shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

DEFINITIONS

SEC. 1302. [42 U.S.C. 300e-1] For purposes of this title:

(1) The term "basic health services" means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist,[72] or other health care personnel a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist,[73] or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985.[74] For purposes of this paragraph, the term "home health services" means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term "supplemental health services" means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by adentist, optometrist, podiatrist, psychologist,[75] or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist,[76] or other health care personnel (as thecase may be) licensed to provide such service.

(3) The term "member" when used in connection with a health maintenance organization means an individual who has entered into a contractual agreement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term "medical group" means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists[77]) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance oranization[78] becomes a qualified health maintenance organization as defined in section 1310(d),or as authorized by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

---

[72] P.L. 99-660, §814(a), inserted "psychologist,"
[73] See footnote 72.
[74] P.L. 99-660, §812(a), added this sentence.
[75] See footnote 72.
[76] See footnote 72.
[77] P.L. 99-660, §814(b), struck out "and podiatrists" and substituted "podiatrists, and psychologists".

(5) The term "individual practice association" means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology,[79] or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible (i) for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff, and (ii) for the arrangement and encouragement of the continuing education of such persons in the field of clinical medicine and related areas.

(6) The term "health systems agency" means an entity which is designated in accordance with section 1515 of this Act.

(7) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services of a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term "community rating system" means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for allindividuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups it shall—

(i) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary.

(ii) determine its revenue requirements for providing services to the members of each class established under clause (i), and

(iii) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under clause (ii) for providing services to them as members of the classes established under clause (i).

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose.

---

[78] As in original. Should be "organization".
[79] P.L. 99-660, §814(c), inserted "psychology,".

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C);

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members;

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in ahealth maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10, United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5, United States Code) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term "non-metropolitan area" means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

* * * * * * *

EMPLOYEES' HEALTH BENEFITS PLANS

Sec. 1310. [42 U.S.C. 300e-9]

* * * * * * *

(d) For purposes of this section, the term "qualified health maintenance organization" means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to becomes a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).[illegible]

* * * * * * *

CONTINUED REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

Sec. 1312. [42 U.S.C. 300e-11] (a) If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this title as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 1310—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 1301(b), or

(3) is not organized or operated in the manner prescribed by section 1301(c),

the Secretary may take the action authorized by subsection (b).

(b)(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 1310(d)(1), a determination described in subsection (a), the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary

---

[illegible] P.L. 99-660, §808, struck out "Every two years (or such longer period as the Secretary may by regulation prescribe) after the date a health maintenance organization becomes a qualified health maintenance organization under this subsection, the health maintenance organization must demonstrate to the Secretary that it is qualified within the meaning of this subsection.".

provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 1310 until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 1310, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this title, a determination described in subsection (a), the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this title for the grant, contract, loan, or loan guarantee.

* * * * * * *

FINANCIAL DISCLOSURE

SEC. 1318. [42 U.S.C. 300e-17] (a) Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1124 of the Social Security Act by disclosing entities and the information required to be supplied under section 1902(a)(38) of such Act.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) For the purposes of this section the term "party in interest" means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on[81] other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Each health maintenance organization shall make the information reported pursuant to subsection (a) available to its enrollees upon reasonable request.

(d) The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3).

[(e) Repealed.[82]]

(f) Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) shall be ineligible for any Federal assistance under this title until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 1310.

(h) Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

* * * * * * *

[Title XV—Repealed.[83]]

TITLE XVI—HEALTH RESOURCES DEVELOPMENT

* * * * * * *

PART C—GENERAL PROVISIONS

* * * * * * *

APPLICATIONS

SEC. 1621. [42 U.S.C. 300s-1]

* * * * * * *

(b)(1) * * *

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

* * * * * * *

[*Internal References.*—Social Security Act §501(b)(1)(C) cites §§316, 1101, 1121 and 1131 of the Public Health Service Act; §1101(a)(9)(end) and §1124(a)(2)(A) cite §1301(a); §1121(a)(end) cites §306(e)(1); §1121(c) cites §§1515 and 1521; §1122(b)(end) cites the Public Health Service Act; §1122(d)(1)(B)(ii)(I) cites §§314(a) and (b) and §604(a); §1138(a)(1)(B) cites §372; §1138(b)(1)(A)(i) cites §371(a) and (b); §1138(b)(2) cites §371(b)(1)(E); §1861(v)(1)(M) cites titles VI and XVI; §§1861(aa)(2)(end)(i)(I) and 1902(m)(2)(E)(iv) cite §1302(7); §1861(aa)(2)(end)(i)(II) cites §332(a)(1)(A); §1875(c)(5) cites §§305 and 309; §§1876(b)(1), 1903(g)(1), (m)(1)(A), (m)(2)(E)(ii), (m)(2)(F) and (m)(4)(A) cite §1310(d); §1876(e)(3)(A) cites §1302(8) and (8)(C); §1876(i)(3)(C)(i) cites §§1301(c)(8) and

---

[81] As in original. Possibly should be "or".

[82] P.L. 99-660, §810, repealed subsection (e).

[83] P.L. 99-660, §701(a), repealed title XV.

1318(a) and (c); §1883(b)(2) cites §1521; §1902(e)(2)(A) cites title XIII; §1903(m)(1)(B) cites §1312(a) and (b); §§1903(m)(2)(B)(i)(I) and (m)(2)(G) cite §§329(d)(1)(A) and 330(d)(1); §1903(m)(4)(A) cites §1318(b); and §1920(b)(2)(D)(i)(I) cites §§329 and 330. Social Security Act §1902(a)(38) and the catchlines to §1124; title XVIII, §1861(o), and title XIX have footnotes referring to P.L. 78-410.]

P.L. 79-291, Approved December 29, 1945 (59 Stat. 669)
[International Organizations Immunities Act]

* * * * * * *

TITLE I

SECTION 1. [22 U.S.C. 288] For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or makng an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

* * * * * * *

SEC. 10. [22 U.S.C. 288 note] This title may be cited as the "International Organizations Immunities Act".

* * * * * * *

[*Internal References.*—Social Security Act §210(a)(15) cites International Organizations Immunities Act (59 Stat. 669). Social Security Act title II has a footnote referring to P.L. 79-291.]

P.L. 79-396, Approved June 4, 1946 (60 Stat. 239)
National School Lunch Act

* * * * * * *

SEC. 12. [42 U.S.C. 1760]

* * * * * * *

(e) The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1612(b) and 1613(a) have footnotes referring to P.L.79-396.]

P.L. 79-733, Approved August 14, 1946 (60 Stat. 1090)
[Agricultural Marketing Act of 1946]

* * * * * * *

TITLE II

[7 U.S.C. 1621 note] This title may be cited as the "Agricultural Marketing Act of 1946".

* * * * * * *

Sec. 205. [7 U.S.C. 1624] (a) In carrying out the provisions of title II of this Act, the Secretary of Agriculture may cooperate with other branches of the Government, State agencies, private research organizations, purchasing and consuming organizations, boards of trade, chambers of commerce, other associations of business or trade organizations, transportation and storage agencies and organizations, or other persons or corporations engaged in the production, transportation, storing, processing, marketing, and distribution of agricultural products whether operating in one or more jurisdictions. The Secretary of Agriculture shall have authority to enter into contracts and agreements under the terms of regulations promulgated by him with States and agencies of States, private firms, institutions, and individuals for the purpose of conducting research and service work, making and compiling reports and surveys, and carrying out other functions relating thereto when in his judgment the services or functions to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department of Agriculture. Contracts hereunder may be made for work to be performed within a period not more than four years from the date of any such contract, and advance, progress, or other payments may be made. The provisions of section 3648 (31 U.S.C., sec. 529[1]) and section 3709 (41 U.S.C., sec. 5) of the Revised Statutes shall not be applicable to contracts or agreements made under the authority of this section. Any unexpended balances of appropriations obligated by contracts as authorized by this section may, notwithstanding the provisions of section 5 of the Act of June 20, 1874, as amended (31 U.S.C., sec. 713), remain upon the books of the Treasury for not more than five fiscal years before being carried to the surplus fund and covered into the Treasury. Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.

(b) The Secretary of Agriculture shall promulgate such orders, rules, and regulations as he deems necessary to carry out the provisions of this title.

* * * * * * *

[*Internal Reference.*—Social Security Act §218(b)(5) cites §205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624).]

P.L. 80-759, Approved June 24, 1948 (62 Stat. 604)
Military Selective Service Act

* * * * * * *

SECTION 1. [50 U.S.C. App. 451] (a) This Act may be cited as the "Military Selective Service Act".

(b) The Congress hereby declares that an adequate armed strength must be achieved and maintained to insure the security of this Nation.

(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.

(d) The Congress further declares, in accordance with our traditional military policy as expressed in the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, both Ground and Air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the Regular components of the Ground Forces and the Air Forces, and those in active service under this title, the National Guard of the United States, both Ground and Air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal

---

[1] P.L. 97-258, §4(b), deems this reference to be to 31 U.S.C. 3324(a) and (b).

Service and continued therein so long as such necessity exists.

* * * * * * *

SEC. 12. [50 U.S.C. App. 462]

* * * * * * *

(e) The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of individuals required by a proclamation of the President under section 3 to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.

* * * * * * *

[*Internal References.*—Social Security Act §210(m)(5)(B) cites the Military Selective Service Act and SSAct §§205(c)(2)(C)(i) and 208(h) have footnotes referring to §12(e) of this Act.]

P.L. 81-171, Approved July 15, 1949 (63 Stat. 413)

Housing Act of 1949[1]

* * * * * * *

SEC. 521. [42 U.S.C. 1490a] * * *

(a)(1) * * *

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing.

(C) For persons of low income under section 502 or 517(a) who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this title, the National Housing Act, and the United States Housing Act of 1937) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

* * * * * * *

(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act and the United States Housing Act of 1937.

* * * * * * *

[*Internal References.*—Social Security Act §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1402(a)(8)(C), 1602(a)(14)(D)(State), 1612(b) and 1613(a) have footnotes referring to P. L. 81-171. P.L. 94-375, §2(h), cites title V of the Housing Act of 1949.]

---

[1] See P.L. 94-375, §2(h), with respect to exclusion of housing assistance under this law from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. Vol. II, p. 585.

P.L. 81-474, Approved April 19, 1950 (64 Stat. 44)
[Navajo and Hopi Indians**]**

SEC. 9. **[**25 U.S.C. 639**]** Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under section 403(a) of the Social Security Act) an amount, in addition to the amount prescribed to be paid to such State under such section, equal to 80 per centum of the total amount of contributions by the State toward expenditures during the preceding quarter by the State, under the State plan approved under the Social Security Act for aid to dependent children to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under section 403(a) of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such section.

* * * * * * *

[*Internal Reference.*—Social Security Act §403(a)(end) has a footnote referring to P. L. 81-474.**]**

P.L. 81-831, Enacted September 23, 1950 (64 Stat. 987, 991)
Internal Security Act of 1950

TITLE I—SUBVERSIVE ACTIVITIES CONTROL

(Subversive Activities Control Act of 1950)

* * * * * * *

DEFINITIONS

SEC. 3. **[**50 U.S.C. 782**]** For the purposes of this title—

(1) The term "person" means an individual or an organization.

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement referred to in section 2 of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, or (B) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization, and (C) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(4)(A) The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement, "No referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: *Provided,* *however*, That any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a "Communist-infiltrated organization".

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization.

(6) The term "to contribute funds or services" includes the rendering of any personal service and the making of any gift, subscription, loan, advance, or deposit, of money or of anything of value, and also the making of any contract, promise, or agreement to contribute funds or services, whether or not legally enforcible.

(7) The term "facility" means any plant, factory or other manufacturing, producing or service establishment, airport, airport facility, vessel, pier, water-front facility, mine, railroad, public utility, laboratory, station, or other establishment or facility, or any part, division, or department of any of the foregoing. The term "defense facility" means any facility designated by the Secretary of Defense pursuant to section 5(b) of this title and which is in compliance with the provisions of such subsection respecting the posting of notice of such designation.

(8) The term "publication" means any circular, newspaper, periodical, pamphlet, book, letter, post card, leaflet, or other publication.

(9) The term "United States", when used in a geographical sense, includes the several States, Territories, and possessions of the United States, the District of Columbia, and the Canal Zone.

(10) The term "interstate or foreign commerce" means trade, traffic, commerce, transportation, or communication (A) between any State, Territory, or possession of the United States (including the Canal Zone), or the District of Columbia, and any place outside thereof, or (B) within any Territory or possession of the United States (including the Canal Zone), or within the District of Columbia.

(11) The term "Board" means the Subversive Activities Control Board created by section 12 of this title.

(12) The term "final order of the Board" means an order issued by the Board under section 13 or 13A[1] of this title, which has become final as provided in section 14 of this title.

(13) The term "advocates" includes advises, recommends, furthers by overt act, and admits belief in; and the giving, loaning, or promising of support or of money or anything of value to be used for advocating any doctrine shall be deemed to constitute the advocating of such doctrine.

(14) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist movement.

(15) The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(16) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(17) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(18) "Advocating the economic, international, and governmental doctrines of world communism" means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(19) "Advocating the economic and governmental doctrines of any other form of totalitarianism" means advocating the establishment of totalitarianism (other than world communism) and includes, but is not limited to, advocating the economic and governmental doctrines of fascism and nazism.

CERTAIN PROHIBITED ACTS

SEC. 4. [50 U.S.C. 783] (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: *Provided, however*, That this subsection shall not apply to the proposal of a constitutional amendment.

---

[1] As in original. Possibly should be "13a".

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(e) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.

* * * * * * *

[*Internal References.*—Social Security Act §202(u)(1)(B) cites §4 and §210(a)(17) cites the Internal Security Act of 1950.]

P.L. 82-183, Approved October 20, 1951 (65 Stat. 452)
Revenue Act of 1951

[Jenner Amendment]

* * * * * * *

PROHIBITION UPON DENIAL OF SOCIAL SECURITY ACT FUNDS

SEC. 618. [42 U.S.C. 1306a] No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to title I (other than section 3(a)(3) thereof), IV, X, XIV, or XVI (other than section 1603(a)(3) thereof) of the Social Security Act, as amended, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

* * * * * * *

[*Internal References.*—Social Security Act titles I, IV, X, XIV, and XVI (State) and at §§402(a)(9), 1002(a)(9), and 1402(a)(9) have footnotes referring to P. L. 82-183.]

P.L. 82-414, Approved June 27, 1952 (66 Stat. 163)

Immigration and Nationality Act

* * * * * * *

DEFINITIONS

SECTION. 101. [8 U.S.C. 1101] (a) As used in this Act—

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * * * *

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning * * * (ii) who is coming temporarily to the United States (a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor[1] if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; * * *

* * * * * * *

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing, or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

---

[1] P.L. 99-603, §301(a), struck out "to perform temporary services or labor," and substituted clause (a) and "(b) to perform other temporary service or labor".

ALLOCATION OF IMMIGRANT VISAS WITHIN QUOTAS

SEC. 203. [8 U.S.C. 1153] (a) * * *

(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

* * * * * * *

ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES

SEC. 207. [8 U.S.C. 1157]

* * * * * * *

(c)(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwide[2] provided under paragraph (3)) as an immigrant under this Act.

(2) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42), be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(3) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 101(a)(42) at the time of the alien's admission.

* * * * * * *

---

[2] As in original. Should be "otherwise".

ASYLUM PROCEDURE

SEC. 208. [8 U.S.C. 1158] (a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided.

(c) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

* * * * * * *

SPECIAL AGRICULTURAL WORKERS[3]

SEC. 210. [8 U.S.C. 1160] (a) LAWFUL RESIDENCE.—

(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

(B) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES AND RESIDENCE IN THE UNITED STATES.—The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(2) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) GROUP 1.—Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary residence status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) GROUP 2.—In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) NUMERICAL LIMITATION.—Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

---

[3] P.L. 99-603, §302(a), added §210.

(4) Authorized travel and employment during temporary residence.—During the period an alien is in lawful temporary residence status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(b) Applications for Adjustment of Status.—

(1) To whom may be made.—

(A) Within the united states.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the united states.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications.—For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) Proof of eligibility.—

(A) In general.—An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) Documentation of work history.—(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the aliens' evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) Confidentiality of information.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) Penalties for false statements in applications.—

(A) Criminal penalty.—Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

(c) Waiver of Numerical Limitations and Certain Grounds for Exclusion.—

(1) Numerical limitations do not apply.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion.—In the determination of an alien's admissibility under subsection (a)(1)(C)—

(A) Grounds of exclusion not applicable.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) Waiver of other grounds.—

(i) In general.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraph (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges).

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) Special Rule for Determination of Public Charge.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary Stay of Exclusion or Deportation and Work Authorization for Certain Applicants.—

(1) Before application period.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(e) ADMINSTRATIVE AND JUDICAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICAL REVIEW.—

(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsections (b)(3) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS[•]

SEC. 210A. [8 U.S.C. 1161]

* * * * * * *

(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) IN GENERAL.—For each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to

---

[•] P.L. 99-603, §303(a), added §210A.

lawful temporary resident status, of a number of aliens equal to the shortage number (if any, determined under subsection (a)) for the fiscal year, or if less, the numerical limitation established under subsection (b)(1) for the fiscal year. No such alien shall be admitted who is not admissible to the United States as an immigrant, except as otherwise provided under subsection (e).

(2) Allocation of visas.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for temporary residence under this subsection. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

(d) Rights of Aliens Admitted or Adjusted Under This Section.—

(1) Adjustment to permanent residence.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (c) to that of an alien lawfully admitted for permanent residence at the end of the 3-year period that begins on the date the alien was granted such temporary resident status.

(2) Termination of temporary residence.—During the period of temporary resident status granted an alien under subsection (c), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(3) Authorized travel and employment during temporary residence.—During the period an alien is in lawful temporary resident status granted under this section, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(4) In general.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(5) Employment in seasonal agricultural services required.—

(A) For 3 years to avoid deportation.—In order to meet the requirement of this paragraph (for purposes of this subsection and section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for temporary residence under this section, must establish to the Attorney General that the alien has performed 90 man-days of seasonal agricultural services—

(i) during the one-year period beginning on the date the alien obtained such status,

(ii) during the one-year period beginning one year after the date the alien obtained such status, and

(iii) during the one-year period beginning two years after the date the alien obtained such status.

(B) For 5 years for naturalization.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 90 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

(C) Proof.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

(D) Adjustment of number of man-days required.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(8).

(6) Disqualification from certain public assistance.—The provisions of section 245A(h) (other than paragraph (1)(A)(iii)) shall apply to an alien who has obtained the status of an alien lawfully admitted for temporary residence under this section, during the five-year period beginning on the date the alien obtained such status, in the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

(e) DETERMINATION OF ADMISSIBILITY OF ADDITIONAL WORKERS.—In the determination of an alien's admissibility under subsection (c)(1)—

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(2) WAIVER OF CERTAIN GROUNDS FOR EXCLUSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(B) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under subparagraph (A):

(i) Paragraphs (9) and (10) (relating to criminals).

(ii) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(iii) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(iv) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(3) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

* * * * * * *

(g) GENERAL DEFINITIONS.—In this section:

(1) The term "special agricultural worker" means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

(2) The term "seasonal agricultural services" has the meaning given such term in section 210(h).

(3) The term "Director" refers to the Director of the Bureau of the Census.

(4) The term "man-day" means, with respect to seasonal agricultural services, the performance during a calendar day of at least 4 hours of seasonal agricultural services.

* * * * * * *

SEC. 212. [8 U.S.C. 1182]

* * * * * * *

(d) * * *

(5)(A) The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

* * * * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

* * * * * * *

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended, or has been convicted under section 1546 of title 18 of the United States Code;

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 212(a), unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of such section, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 have such knowledge or reason to believe) that such organization was a Communist organization;

* * * * * * *

[(10) Repealed.[5]]

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))[6];

(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212(a); or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

* * * * * * *

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.[7]

(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United

---

[5] P.L. 99-653, §7(c), repealed paragraph (10).

[6] P.L. 99-570, §1751(b), struck out "relating to the illicit possession of or traffic in narcotic drugs or marihuana, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate" and substituted "of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

[7] As in original. Period should possibly be a semicolon.

States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; an Act entitled "An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes", approved October 6, 1917; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 215 of this Act; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment thereof; the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code;

(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917;•

* * * * * * *

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE•

SEC. 245A. [8 U.S.C. 1255a] (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) TIMELY APPLICATION.—

(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) NONIMMIGRANT.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

•P.L. 99-603, §303(b)(1), struck out "or".

•P.L. 99-603, §201(a), added §245A.

(C) Exchange visitors.—If the alien was at any time a nonimmigrant exhange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since enactment.—

(A) In general.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions.—Nothing in this section shall be construed as authorizing an alien to apply for admisison to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.—

(1) Adjustment to permanent residence.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence.—The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence.—

(i) In general.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant.—The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills.—

(i) In general.—The alien must demonstrate that he either—

(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly individuals.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

(iii) Relation to naturalization examination.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

(2) TERMINATION OF TEMPORARY RESIDENCE.—The attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

(B) USE OF FEES.—The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a).

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) IMPLEMENTATION OF SECTION.—

(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term "medical assistance" refers to medical assistance under a State plan approved under tite XIX of the Social Security Act.

(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) The Vocational Education Act of 1963.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(E) The Headstart-Follow Through Act.

(F) The Job Training Partnership Act.

(G) Title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

* * * * * * *

CENTRAL FILE; INFORMATION FROM OTHER DEPARTMENTS AND AGENCIES

SEC. 290. [8 U.S.C. 1360]

* * * * * * *

(c) The Federal Security Administrator[10] shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Administrator shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.

* * * * * * *

AUTHORIZATION FOR PROGRAMS FOR DOMESTIC RESETTLEMENT OF AND ASSISTANCE TO REFUGEES

SEC. 412. [8 U.S.C. 1522]

* * * * * * *

(d) ASSISTANCE FOR REFUGEE CHILDREN.—* * *

(2)(A) The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care, furnished to any refugee child (except as provided in subparagraph (B)) during the thirty-six month period beginning with the first month in which such refugee child is in the United States.

(B)(i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act prescribes for the availability of such services to any other child in that State).

(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such a child is in the United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care.

---

[10] Now Secretary of Health and Human Services.

(iii) In carrying out the Director's responsibilities under clause (ii), the Director is authorized to enter into contracts with appropriate public or private nonprofit agencies under such conditions as the Director determines to be appropriate.

(iv) The Director shall prepare and maintain a list of (I) all such unaccompanied children who have entered the United States after April 1, 1975, (II) the names and last known residences of their parents (if living) at the time of arrival, and (III) the children's location, status, and progress.

(e) CASH ASSISTANCE AND MEDICAL ASSISTANCE TO REFUGEES.—(1) The Director is authorized to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee during the thirty-six month period beginning with the first month in which such refugee has entered the United States and for the identifiable and reasonable administrative costs of providing this assistance.

(2)(A) Cash assistance provided under this subsection to an employable refugee is conditioned, except for good cause shown—

(i) on the refugee's registration with an appropriate agency providing employment services described in subsection (c)(1)(A)(i)[11], or, if there is no such agency available, with an appropriate State or local employment service;

(ii) on the refugee's participation in any available and appropriate social service or targeted assistance[12] program (funded under subsection (c)) providing job or language training in the area in which the refugee resides; and

(iii) on the refugee's acceptance of appropriate offers of employment.[13]

(B) Cash assistance shall not be made available to refugees who are full-time students in institutions of higher education (as defined by the Director after consultation with the Secretary of Education).

(C) In the case of a refugee who—

(i) refuses an offer of employment which has been determined to be appropriate either by the agency responsible for the initial resettlement of the refugee under subsection (b) or by the appropriate State or local employment service,

(ii) refuses to go to a job interview which has been arranged through such agency or service, or

(iii) refuses to participate in a social service or targeted assistance program referred to in subparagraph (A)(ii) which such agency or service determines to be available and appropriate,

cash assistance to the refugee shall be terminated (after opportunity for an administrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).[14]

(3) The Director shall develop plans to provide English training and other appropriate services and training to refugees receiving cash assistance.

(4) If a refugee is eligible for aid or assistance under a State plan approved under part A of title IV or under title XIX of the Social Security Act, or for supplemental security income benefits (including State supplementary payments) under the program established under title XVI of that Act, funds authorized under this subsection shall only be used for the non-Federal share of such aid or assistance, or for such supplementary payments, with respect to cash and medical assistance provided with respect to such refugee under this paragraph.

(5) The Director is authorized to allow for the provision of medical assistance under paragraph (1) to any refugee, during the one-year period after entry, who does not qualify for assistance under a State plan approved under title XIX of the Social Security Act on account of any resources or income requirement of such plan, but only if the Director determines that—

(A) this will (i) encourage economic self-sufficiency, or (ii) avoid a significant burden on State and local governments; and

(B) the refugee meets such alternative financial resources and income requirements as the Director shall establish.

(6) As a condition for receiving assistance, reimbursement, or a contract under this subsection and notwithstanding any other provision of law, a State or agency must provide assurances that whenever a refugee applies for cash or medical assistance for which assistance or reimbursement is provided under this subsection, the State or agency must notify promptly the agency (or local affiliate) which provided for the initial resettlement of the refugee under subsection (b) of the fact that the refugee has so applied.

---

[11] P.L. 99-605, §6(d), struck out "(c)(1)" and substituted "(c)(1)(A)(i)".

[12] P.L. 99-605, §8(b), inserted "or targeted assistance".

[13] P.L. 99-605, §9(a)(1), struck out "Such cash assistance provided to such a refugee shall be terminated (after opportunity for an administrative hearing) with the month in which the refugee refuses such an appropriate offer of employment or refuses to participate in such an available and appropriate social service program.".

[14] P.L. 99-605, §9(a)(2), added subparagraph (C).

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. The Secretary may permit alternative projects to cover specific groups of refugees who have been in the United States 36 months or longer if the Secretary determines that refugees in the group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.[15]

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act.

* * * * * * *

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 414(a) of this Act, part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing and evaluating alternative projects under this paragraph.[16]

* * * * * * *

[*Internal References.*—Social Security Act §202(n)(1) and (n)(2) cite §241(a)(1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), and (18) of the Immigration and Nationality Act; §202(n)(2) cites §241(a); §210(a)(18) cites §101(a)(15)(H)(ii); §210(a)(19) cites §101(a)(15)(F) and (J); §§402(a)(33)(B) cites §§203(a)(7), 207(c), 208, and 212(d)(5); §§402(f)(1) and (2) and 472(a)(end) cite §§210(f), 210A(d)(7)[17] and 245A(h); §402(f)(2) cites §§210, 210A, and 245A; §§415(f)(1), 1614(a)(1)(B), and 1621(f)(2)(A) cite §203(a)(7); §415(f)(2) cites §207(c); §§415(f)(3), 1614(a)(1)(B) and 1621(f)(2)(C) cite §212(d)(5); §415(f)(4) cites §208; §1621(f)(2)(B) cites §207(c)(1); and §1921(a)(4) cites §412(e)(5) of such Act.]

SELECTED PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954[1]

P.L. 83-591, APPROVED AUGUST 16, 1954 (68A STAT. 3)

TITLE 26, U.S. CODE

Subtitle A—Income Taxes[2]

CHAPTER 1—NORMAL TAXES AND SURTAXES

Page
Sec. 31. Tax withheld on wages 306
Sec. 32. Earned income 306
Sec. 61. Gross income defined 308
Sec. 74. Prizes and awards 308
Sec. 86. Social security and tier 1 railroad retirement benefits 309
Sec. 107. Rental value of parsonages 310
Sec. 117. Qualified scholarships 310
Sec. 119. Meals or lodging furnished for the convenience of the employer 311
Sec. 120. Amounts received under qualified group legal services plans 312
Sec. 125. Cafeteria plans 313

---

[15] P.L. 99-605, §10, added this sentence.

[16] P.L. 98-473, §101(d), added paragraph (7).

[17] Reference probably should be to §210A(d)(6).

[1] The Internal Revenue Code of 1954 has not been codified into positive law; section numbers in title 26, U.S. Code, correspond to sections in the Internal Revenue Code of 1954.

P.L. 99-514, §2(a), provides that the Internal Revenue Title enacted August 14, 1954, may be cited as the "Internal Revenue Code of 1986" and §2(b), provides, except when inappropriate, any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of the Internal Revenue Code of 1954.

[2] For provisions of Subtitle C and Subtitle A, Chapter 2, see Vol. I, p. 855.

Page
Sec. 127. Educational assistance programs 315
Sec. 129. Dependent care assistance programs 316
Sec. 132. Certain fringe benefits 318
Sec. 162. Trade or business expenses 321
Sec. 164. Taxes 327
Sec. 170. Charitable, etc., contributions and gifts 328
Sec. 172. Net operating loss deduction 337
Sec. 217. Moving expenses 338
Sec. 219. Retirement savings 340
Sec. 401. Qualified pension, profit-sharing, and stock bonus plans 341
Sec. 402. Taxability of beneficiary of employees' trust 357
Sec. 403. Taxation of employee annuities 357
Sec. 405. [Repealed.] 361
Sec. 408. Individual retirement accounts 361
Sec. 414. Definitions and special rules 363
Sec. 501. Exemption from tax on corporations, certain trusts, etc 364
Sec. 509. Private foundation defined 372
Sec. 513. Unrelated trade or business 373
Sec. 631. Gain or loss in the case of timber, coal, or domestic iron ore 373
Sec. 702. Income and credits of partner 374
Sec. 707. Transactions between partner and partnership 375
Sec. 761. Terms defined 375
Sec. 861. Income from sources within the United States 375
Sec. 871. Tax on nonresident alien individuals 375
Sec. 911. Citizens or residents of the United States living abroad 375
Sec. 931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands 379
Sec. 932. Coordination of United States and Virgin Islands income taxes 379
Sec. 933. Income from sources within Puerto Rico 380
Sec. 1202. [Repealed.] 381
Sec. 1221. Capital asset defined 381
Sec. 1231. Property used in the trade or business and involuntary conversions 381
Sec. 1256. Section 1256 contracts marked to market 383

Subtitle F—Procedure and Administration

CHAPTER 61—INFORMATION AND RETURNS

Sec. 6001. Notice or regulations requiring records, statements, and special returns 387
Sec. 6011. General requirement of return, statement, or list 387
Sec. 6017. Self-employment tax returns 388
Sec. 6050B. Returns relating to unemployment compensation 388
Sec. 6051 Receipts for employees 388
Sec. 6052. Returns regarding payment of wages in the form of group-term life insurance 390
Sec. 6053. Reporting of tips 390
Sec. 6057. Annual registration, etc 392
Sec. 6103. Confidentiality and disclosure of returns and return information 393
Sec. 6109. Identifying numbers 400

CHAPTER 63—ASSESSMENT

Sec. 6205. Special rules applicable to certain employment taxes 400

CHAPTER 64—COLLECTION

Sec. 6305. Collection of certain liability 401
Sec. 6331. Levy and distraint 402
Sec. 6334. Property exempt from levy 402

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

Sec. 6402. Authority to make credits or refunds 403
Sec. 6413. Special rules applicable to certain employment taxes 404

Page

CHAPTER 66—LIMITATIONS

Sec. 6511. Limitations on credit or refund 406

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Sec. 6654. Failure by individual to pay estimated income tax 410

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Sec. 7213. Unauthorized disclosure of information 410

CHAPTER 80—GENERAL RULES

Sec. 7852. Other applicable rules 411

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

SEC. 31. TAX WITHHELD ON WAGES.[3]

* * * * * * *

(b) Credit for Special Refunds of Social Security Tax.—

(1) In general.—The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit.—Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

SEC. 32.[4] EARNED INCOME.

(a) Allowance of Credit.—In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 14[5] percent of so much of the earned income for the taxable year as does not exceed $5,714[6].

(b) Limitation.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) the maximum credit allowable under subsection (a) to any taxpayer, over

(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting "$6,500" for "$9,000".[7]

(c) Definitions.—For purposes of this section—

(1) Eligible individual.—

(A) In general.—The term "eligible individual" means an individual who, for the taxable year—

(i) is married (within the meaning of section 7703[8]) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(c)(3)[9]) or would be so entitled but for paragraph (2) or (4) of section 152(e)[10],

(ii) is a surviving spouse (as determined under section 2(a)), or

(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) of paragraph (1) of such subsection).

---

[3] P.L. 97-248, §302(a), amended §31 in its entirety.
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §302(a).

[4] P.L. 98-369, §471(c), redesignated the former §43 as §32.

[5] P.L. 98-369, §1042(a), struck out "10" and substituted "11".
P.L. 99-514, §111(a)(1), struck out "11" and substituted "14".

[6] P.L. 99-514, §111(a)(2), struck out "$5,000" and substituted "$5,714".

[7] P.L. 99-514, §111(b), amended subsection (b) in its entirety.

[8] P.L. 99-514, §1301(j)(8), struck out "143" and substituted "7703".

[9] P.L. 99-514, §104(b)(1)(B), struck out "151(e)(3)" and substituted "151(c)(3)".

[10] P.L. 98-369, §423(c)(3)(A), inserted "or would be so entitled but for paragraph (2) or (4) of section 152(e)".

(B) Child must reside with taxpayer in the United States.—An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual for more than one-half of the taxable year[11] and such abode is in the United States. An individual shall be treated as satisfying clause (ii) or (iii) of subparagraph (A) only if the household in question is in the United States.

(C) Individual who claims benefits of section 911 not eligible individual.—The term "eligible individual" does not include an individual who, for the taxable year, claims the benefits of section 911 (relating to citizens or residents of the United States living abroad).[12]

(2) Earned income.—

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)[13].

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

(d) Married Individuals.—In the case of an individual who is married (within the meaning of section 7703[14]), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable Year Must be Full Taxable Year.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of Credit To Be Determined Under Tables.—

(1) In general.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables.—The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and[15]

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).[16]

(g) Coordination With Advance Payments of Earned Income Credit.—

(1) Recapture of excess advance payments.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(h) Reduction of Credit to Taxpayers Subject to Alternative Minimum Tax.—The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax for taxpayers other than corporations) with respect to such taxpayer for such taxable year.[17]

(i) Inflation Adjustments.—

(1) In general.—In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

---

[11] P.L. 98-369, §423(c)(3)(B), inserted "for more than one-half of the taxable year".

[12] P.L. 99-514, §1272(d)(4), amended subparagraph (C) in its entirety.

[13] P.L. 98-21, §124(c)(4)(B), inserted ", but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)", applicable to taxable years beginning after December 31, 1989.

[14] See footnote 8.

[15] P.L. 99-514, §111(d)(1), amended subparagraph (A) in its entirety.

[16] P.L. 99-514, §111(d)(1), amended subparagraph (B) in its entirety.

[17] P.L. 98-369, §1042(c), added subsection (h).

(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting "calendar year 1984" for "calendar year 1987" in subparagraph (B) thereof.

(2) DEFINITIONS, ETC.—For purposes of paragraph (1)—

(A) APPLICABLE CALENDAR YEAR.—The term "applicable calendar year" means—

(i) 1986 in the case of the dollar amounts referred to in clause (i) or (ii) of subparagraph (B), and

(ii) 1987 in the case of the dollar amount referred to in clause (iii) of subparagraph (B).

(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

(i) the $5,714 amount contained in subsection (a),

(ii) the $6,500 amount contained in the last sentence of subsection (b), and

(iii) the $9,000 amount contained in subsection (b)(2).

(3) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or, if such increase is a multiple of $5, such increase shall be increased to the next higher multiple of $10).[18]

* * * * * * *

SEC. 61. GROSS INCOME DEFINED.

(a) GENERAL DEFINITION.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits,[19] and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

(b) CROSS REFERENCES.—

For items specifically included in gross income, see part II (sec. 71 and following).
For items specifically excluded from gross income, see part III (sec. 101 and following).

* * * * * * *

SEC. 74. PRIZES AND AWARDS.

* * * * * * *

(c) EXCEPTION FOR CERTAIN EMPLOYEE ACHIEVEMENT AWARDS.—

(1) IN GENERAL.—Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) EXCESS DEDUCTION AWARD.—If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

---

[18] P.L. 99-514, §111(c), added subsection (i).
[19] P.L. 98-369, §531(c), inserted "fringe benefits,".

(3) TREATMENT OF TAX-EXEMPT EMPLOYERS.—In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) CROSS REFERENCE.—

For provisions excluding certain de minimis fringes from gross income, see section 132(e).[20]

* * * * * * *

SEC. 86. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.[21]

(a) IN GENERAL.—Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act)[22] includes social security benefits in an amount equal to the lesser of—

(1) one-half of the social security benefits received during the taxable year, or

(2) one-half of the excess described in subsection (b)(1).

(b) TAXPAYERS TO WHOM SUBSECTION (a) APPLIES.—

(1) IN GENERAL.—A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term "modified adjusted gross income" means adusted[23] gross income—

(A) determined without regard to this section and sections [24] 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) BASE AMOUNT.—For purposes of this section, the term "base amount" means—

(1) except as otherwise provided in this subsection, $25,000,

(2) $32,000, in the case of a joint return, and

(3) zero, in the case of a taxpayer who—

(A) is married at the close of the taxable year (within the meaning of section 7703[25]) but does not file a joint return for such year, and

(B) does not live apart from his spouse at all times during the taxable year.

(d) SOCIAL SECURITY BENEFIT.—

(1) IN GENERAL.—For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.

(2) ADJUSTMENT FOR REPAYMENTS DURING YEAR.—

(A) IN GENERAL.—For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) DENIAL OF DEDUCTION.—If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) WORKMEN'S COMPENSATION BENEFITS SUBSTITUTED FOR SOCIAL SECURITY BENEFITS.—For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit

---

[20] P.L. 99-514, §122(a)(1)(D), added subsection (c).

[21] P.L. 98-21, §121(a), inserted this §86.

[22] P.L. 98-21, §335(b)(2)(A), inserted "(notwithstanding section 207 of the Social Security Act)".

[23] As in original. Should be "adjusted".

[24] P.L. 99-514, §131(b)(2), struck out "221,".

[25] See footnote 8.

under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit.—For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term "employment" as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.[26]

(5) Effect of early delivery of benefit checks.—For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.[27]

(e) Limitation on Amount Included Where Taxpayer Receives Lump-Sum Payment.—

(1) Limitation.—If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules.—

(A) Year to which benefit attributable.—For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election.—An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as Pension or Annuity For Certain Purposes.—For purposes of—

(1) section 22(c)(3)(A)[28] (relating to reduction for amounts received as pension or annuity),[29]

(2)[30] section 32(c)(2)[31] (defining earned income),

(3)[32] section 219(f)(1) (defining compensation),

(4)[33] section 221(b)(2) (defining earned income), and

(5)[34] section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

* * * * * * *

SEC. 107. RENTAL VALUE OF PARSONAGES.

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

* * * * * * *

SEC. 117. QUALIFIED SCHOLARSHIPS.[35]

(a) General Rule.—Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

---

[26] P.L. 99-272, §13204(a), amended paragraph (4) in its entirety.
[27] P.L. 99-272, §12111(b), added paragraph (5).
[28] P.L. 99-514, §1847(b)(2), struck out "37(c)(3)(A)" and substituted "22(c)(3)(A)".
[29] P.L. 98-369, §2661(o)(1), inserted this paragraph (1).
[30] P.L. 98-369, §2661(o)(1), redesignated the former paragraph (1) as paragraph (2).
[31] P.L. 98-369, §474(r)(2), struck out "43(c)(2)" and substituted "32(c)(2)".
[32] P.L. 98-369, §2661(o)(1), redesignated paragraph (2) as paragraph (3).
[33] P.L. 98-369, §2661(o)(1), redesignated paragraph (3) as paragraph (4).
[34] P.L. 98-369, §2661(o)(1), redesignated paragraph (4) as paragraph (5).
[35] P.L. 99-514, §123(a), amended §117 in its entirety.

(b) **Qualified Scholarship.**—For purposes of this section—

(1) **In general.**—The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) **Qualified tuition and related expenses.**—For purposes of paragraph (1), the term "qualified tuition and related expenses" means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) **Limitation.**—Subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(d) **Qualified Tuition Reduction.**—

(1) **In general.**—Gross income shall not include any qualified tuition reduction.

(2) **Qualified tuition reduction.**—For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

(3) **Reduction must not discriminate in favor of highly compensated, etc.**—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any[36] highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of[37] highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).[38]

(4) **Exclusion of certain employees.**—For purposes of this subsection, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).[39]

* * * * * * *

SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

(a) **Meals and Lodging Furnished to Employee, His Spouse, and His Dependents, Pursuant to Employment.**—There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) **Special Rules.**—For purposes of subsection (a)—

(1) **Provisions of employment contract or state statute not to be determinative.**—In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) **Certain factors not taken into account with respect to meals.**—In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) **Certain fixed charges for meals.**—

(A) **In general.**—If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

---

[36] P.L. 99-514, §1114(b)(2)(A), struck out "officer, owner, or".

[37] P.L. 99-514, §1114(b)(2)(B), struck out "officers, owners, or".

[38] P.L. 99-514, §1114(b)(2)(C), added this sentence.

[39] P.L. 99-514, §1151(g)(2), added paragraph (4).

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A).—Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(c) Employees Living in Certain Camps.—

(1) In general.—In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp.—For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging Furnished by Certain Educational Institutions to Employees.—

(1) In general.—In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent.—Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value (as of the close of the calendar year in which the taxable year begins) of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

(3) Qualified campus lodging.—For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution.—For purposes of this paragraph, the term "educational institution" means an institution described in section 170(b)(1)(A)(ii).[40]

SEC. 120. AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) Exclusion by Employee for Contributions and Legal Services Provided by Employer.—Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

(b) Qualified Group Legal Services Plan.—For purposes of this section, a qualified group legal services plan is a separate plan of an employer—

(1) under which the employer provides specified personal legal services to employees (or their spouses or dependents) through the prepayment of, or the provision in advance for, any portion of the legal fees for such services, and

(2) which meets the requirements of subsection (c) and section 89(k).[41]

(c) Requirements.—

(1) Discrimination.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q))[42].

---

[40] P.L. 99-514, §1164(a), added subsection (d).

[41] P.L. 99-514, §1151(c)(3), amended subsection (b) in its entirety.

[42] P.L. 99-514, §1114(b)(3)(A), struck out "officers, shareholders, self-employed individuals, or" and substituted "employees (within the meaning of section 414(q))".

(2) ELIGIBILITY.—The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).[43]

(3) CONTRIBUTION LIMITATION.—Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) NOTIFICATION.—The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) CONTRIBUTIONS.—Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1)[44] EMPLOYEE.—The[45] term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) ALLOCATIONS.—Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) DEPENDENT.—The term "dependent" has the meaning given to it by section 152.

(5) EXCLUSIVE BENEFIT.—In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) ATTRIBUTION RULES.—For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) TIME OF NOTICE TO SECRETARY.—A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) TERMINATION.—This section and section 501(c)(20) shall not apply to taxable years ending after December 31, 1987[46].

* * * * * * *

SEC. 125. CAFETERIA PLANS .[47]

(a) GENERAL RULE.—In the case of a cafeteria plan—

(1) amounts shall not be included in gross income of a participant in such plan

---

[43] P.L. 99-514, §1151(g)(1), amended this sentence in its entirety.

[44] P.L. 99-514, §1114(b)(3)(B)(ii), struck out "SELF-EMPLOYED INDIVIDUAL;".

[45] P.L. 99-514, §1114(b)(3)(B)(i), struck out "term 'self-employed individual' means, and the".

[46] P.L. 98-612, §1(a), struck out "1984" and substituted "1985".
P.L. 99-514, §1162(b), struck out "1985" and substituted "1987".

[47] P.L. 99-514, §1151(d)(1), amended §125 in its entirety.

solely because, under the plan, the participant may choose among the benefits of the plan, and

(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

(A) paragraph (1) shall not apply, and

(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends.

(b) PROHIBITION AGAINST DISCRIMINATION AS TO ELIGIBILITY TO PARTICIPATE.—

(1) HIGHLY COMPENSATED EMPLOYEES.—A plan shall be treated as failing to meet the requirements of this subsection unless the plan is available to a group of employees as qualify under a classification set up by the employer and which the Secretary find[44] not to be discriminatory in favor of highly compensated employees.

(2) KEY EMPLOYEES.—In the case of a key employee (within the meaning of section 416(i)(1)), a plan shall be treated as failing to meet the requirements of this subsection if the qualified benefits provided to key employees under the plan exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, qualified benefits shall be determined without regard to the last sentence of subsection (e).

(3) EXCLUDABLE EMPLOYEES.—For purposes of this subsection, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).

(c) CAFETERIA PLAN DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "cafeteria plan" means a plan which meets the requirements of section 89(k) and under which—

(A) all participants are employees, and

(B) the participants may choose—

(i) among 2 or more benefits consisting of cash and qualified benefits, or

(ii) among 2 or more qualified benefits.

(2) DEFERRED COMPENSATION PLANS EXCLUDED.—

(A) IN GENERAL.—The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(B) EXCEPTION FOR CASH AND DEFERRED ARRANGEMENTS.—Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) EXCEPTION FOR CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(d) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(e) QUALIFIED BENEFITS DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "qualified benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132).

(2) CERTAIN BENEFITS INCLUDED.—The term "qualified benefits" includes—

(A) any group-term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79, and

(B) any other benefit permitted under regulations.

(f) COLLECTIVELY BARGAINED PLAN NOT CONSIDERED DISCRIMINATORY.—For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(g) CROSS REFERENCES.—

For reporting and recordkeeping requirements, see section 6039D.

* * * * * * *

---

[44] As in original.

SEC. 127. EDUCATIONAL ASSISTANCE PROGRAMS.

(a) Exclusion From Gross Income.—

(1) In general.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250[49] maximum exclusion.—If, but for this paragraph, this section would exclude from gross income more than $5,250[50] of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250[51] of such assistance so furnished.[52]

(b) Educational Assistance Program.—

(1) In general.—For purposes of this section, an educational assistance program is a plan of an employer—

(A) under which the employer provides employees with educational assistance, and

(B) which meets the requirements of paragraphs (2) through (5) and section 89(k).[53]

(2) Eligibility.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q))[54] or their dependents. For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).[55]

(3) Principal shareholders or owners.—Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative.—A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required.—A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees.—Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; Special Rules.—For purposes of this section—

(1) Educational assistance.—The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

---

[49] P.L. 99-514, §1162(a)(2), struck out "$5,000" and substituted "$5,250".

[50] See footnote 49.

[51] See footnote 49.

[52] P.L. 98-611, §1(b), amended subsection (a) in its entirety.

[53] P.L. 99-514, §1151(c)(4), amended paragraph (1) in its entirety.

[54] P.L. 99-514, §1114(b)(4), struck out "officers, owners, or highly compensated," and substituted "highly compensated employees (within the meaning of section 414(q))".

[55] P.L. 99-514, §1151(g)(3), amended this sentence in its entirety.

(B) Interest in unincorporated trade or business.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable.—An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law.—This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction.—No deduction or credit shall be allowed to the employee[56] under any other section of this chapter for any amount excluded from income by reason of this section.

(8) Coordination with section 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase "(below the graduate level)".[57]

(d) Termination.—This section shall not apply to taxable years beginning after December 31, 1987[58].

* * * * * * *

SEC. 129. DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) Exclusion.—

(1) In General.—Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) Limitation of exclusion.—The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).[59]

(b) Earned Income Limitation.—

(1) In general.—The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses.—For purposes of paragraph (1), the provisions of section 21(d)(2)[60] shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) Payments to Related Individuals.—No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c)[61] (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 151(c)(3)[62]) under the age of 19 at the close of such taxable year.

(d) Dependent Care Assistance Program.—

---

[56] P.L. 98-611, §1(e), inserted "to the employee".

[57] P.L. 98-611, §1(c), added paragraph (8).

[58] P.L. 98-611, §1(a), struck out "1983" and substituted "1985".
P.L. 99-514, §1162(a)(1), struck out "1985" and substituted "1987".

[59] P.L. 99-514, §1163(a), amended subsection (a) in its entirety.

[60] P.L. 98-369, §474(r)(6)(A), struck out "44A(e)(2)" and substituted "21(d)(2)".

[61] P.L. 99-514, §104(b)(1)(A), struck out "(e)" and substituted "(c)".

[62] P.L. 99-514, §104(b)(1)(B), struck out "(e)(3)" and substituted "(c)(3)".

(1) In general.—For purposes of this section, a dependent care assistance program is a plan of an employer—

(A) under which the employer provides employees with dependent care assistance, and

(B) which meets the requirements of paragraphs (2) through (6) and section 89(k).[63]

(2) Discrimination.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q))[64] or their dependents.

(3) Eligibility.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents. For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).[65]

(4) Principal shareholders or owners.—Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required.—A program referred to in paragraph (1) is not required to be funded.

(6)[66] Statement of expenses.—The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits.—

(A) In general.—A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees is at least 55 percent of the average benefits provided to highly compensated employees.

(B) Salary reduction agreements.—For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, there shall be disregarded any employees whose compensation (within the meaning of section 415(q)(7)) is less than $25,000.[67]

(e) Definitions and Special Rules.—For purposes of this section—

(1) Dependent care assistance.—The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2)[68] (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income.—The term "earned income" shall have the meaning given such term in section 32(c)(2)[69], but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

---

[63] P.L. 99-514, §1151(c)(5)(A), amended paragraph (1) in its entirety.

[64] See footnote 54.

[65] P.L. 99-514, §1151(g)(4), amended this sentence in its entirety.

[66] P.L. 99-514, §1151(c)(5)(B), struck out the former paragraph (6) and redesignated paragraph (7) as paragraph (6). As a result of this redesignation, there no longer is a paragraph (7).

[67] P.L. 99-514, §1151(f), added paragraph (8).

[68] P.L. 98-369, §474(r)(6)(B), struck out "44A(c)(2)" and substituted "21(b)(2)".

[69] P.L. 98-369, §474(r)(6)(C), struck out "43(c)(2)" and substituted "32(c)(2)".

(6) Utilization test not applicable.—A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction.—No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities.—In the case of an onsite facility, except to the extent provided in regulations, the amount excluded with respect to any dependent shall be based on—

(A) utilization, and

(B) the value of the services provided.[70]

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.[71]

(a) Exclusion From Gross Income.—Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,

(2) qualified employee discount,

(3) working condition fringe, or

(4) de minimis fringe.

(b) No-Additional-Cost Service Defined.—For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified Employee Discount Defined.—For purposes of this section—

(1) Qualified employee discount.—The term "qualfied employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage.—

(A) In general.—The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage.—Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined.—The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee[72], is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services.—The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peeforming[73] services.

---

[70] P.L. 99-514, §1163(b), added paragraph (8).

[71] P.L. 98-369, §531(a)(1), added this §132.

[72] P.L. 99-514, §1853(a)(2), struck out "to the employee by the employer" and substituted "by the employer to an employee for use by such employee".

[73] As in original. Should be "performing".

(d) Working Condition Fringe Defined.—For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De Minimis Fringe Defined.—For purposes of this section—

(1) In General.—The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities.—The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any[74] highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of[75] highly compensated employees.

(f) Certain Individuals Treated as Employees for Purposes of Subsections (a)(1) and (2).—For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee.—With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children.—

(A) In general.—Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child.—For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 151(e)(3)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25[76].

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation.—Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.[77]

(g) Reciprocal Agreements.— For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.[78]

(h) Special Rules.—

(1) Exclusions under subsection (a)(1) and (2) apply to officers, etc., only if no discrimination.—Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any[79] highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of[80] highly compensated employees. For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h).[81]

---

[74] P.L. 99-514, §1114(b)(5)(A)(i), struck out "officer, owner, or".

[75] P.L. 99-514, §1114(b)(5)(A)(ii), struck out "officers, owners, or".

[76] P.L. 99-514, §1853(a)(1), inserted "and who has not attained age 25".

[77] P.L. 99-272, §13207(a)(1), added paragraph (3).

[78] P.L. 99-514, §1151(e)(2)(A), amended subsection (g) in its entirety.

[79] See footnote 74.

[80] See footnote 75.

[81] P.L. 99-514, §1151(g)(5), added this sentence.

(2) **Special rule for leased sections of department stores.**—

(A) **In general.**—For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) **Leased section of department store.**—For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) **Auto salesmen.**—

(A) **In general.**—For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) **Qualified automobile demonstration use.**—For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is[62] provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) **Parking.**—The term "working condition fringe" includes parking provided to an employee on or near the business premises of the employer.

(5) **On-premises gyms and other athletic facilities.**—

(A) **In general.**—Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) **On-premises athletic facility.**—For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

(6) **Special rule for affiliates of airlines.**—

(A) **In general.**—If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) **Qualified affiliate.**—For purposes of this paragraph, the term "qualified affiliate" means any corporation which is predominantly engaged in airline-related services.

(C) **Airline-related services.**—For purposes of this paragraph, the term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) **Affiliated group.**—For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).[63]

(7) **Highly compensated employee.**—For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).[64]

---

[62] P.L. 99-514, §1899A(5), struck out "in" and substituted "is".

[63] P.L. 99-272, §13207(b)(1), added paragraph (6).

[64] P.L. 99-514, §1114(b)(5)(B), added paragraph (7).

(i) CUSTOMERS NOT TO INCLUDE EMPLOYEES.—For purposes of this section (other than subsection (c)(2)[85]), the term "customers" shall only include customers who are not employees.

(j) SECTION NOT TO APPLY TO FRINGE BENEFITS EXPRESSLY PROVIDED FOR ELSEWHERE.—This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

* * * * * * *

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) CHARITABLE CONTRIBUTIONS AND GIFTS EXCEPTED.—No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) ILLEGAL BRIBES, KICKBACKS, AND OTHER PAYMENTS.—

(1) ILLEGAL PAYMENTS TO GOVERNMENT OFFICIALS OR EMPLOYEES.—No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) OTHER ILLEGAL PAYMENTS.—No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) KICKBACKS, REBATES, AND BRIBES UNDER MEDICARE AND MEDICAID.—No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

---

[85] P.L. 99-514, §1853(a)(3), struck out "(B)".

(d) CAPITAL CONTRIBUTIONS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION.—For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) APPEARANCES, ETC., WITH RESPECT TO LEGISLATION.—

(1) IN GENERAL.—The deduction allowed by subsection (a) shall include all the ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(A) in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(B) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by such organization.

(2) LIMITATION.—The provisions of paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred (whether by way of contribution, gift, or otherwise)—

(A) for participation in, or intervention in, any political campaign on behalf of any candidate for public office, or

(B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(f) FINES AND PENALTIES.—No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAWS.—If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(i)[66] STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—

(1) IN GENERAL.—For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

---

[66] As in original. No subsection (h).

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days.—For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election.—An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol.—For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

(i) Group Health Plans.—

(1) Coverage relating to end stage renal disease[87].—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

(2) Plans must provide continuation coverage to certain individuals.—

(A) In general.—No deduction shall be allowed under this section for expenses paid or incurred by an employer for any group health plan maintained by such employer unless all such plans maintained by such employer meet the continuing coverage requirements of subsection (k).

(B) Exception for certain small employers, etc.—Subparagraph (A) shall not apply to any plan described in section 106(b)(2).[88]

(3)[89] Group health plan.—For purposes of this subsection the term "group health plan" means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d)[90]) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.

(j) Certain Foreign Advertising Expenses.—

(1) In general.—No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking.—For purposes of paragraph (1), the term "broadcast undertaking" includes (but is not limited to) radio and television stations.[91]

(k) Continuation Coverage Requirements of Group Health Plans.—

(1) In general.—For purposes of subsection (i)(2) and section 106(b)(1), a group health plan meets the requirements of this subsection only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

(2) Continuation coverage.—For purposes of paragraph (1), the term "continuation coverage" means coverage under the plan which meets the following requirements:

(A) Type of benefit coverage.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.[92]

---

[87] P.L. 99-272, §10001(d), struck out "General Rule" and substituted "Coverage relating to end stage renal disease".

[88] P.L. 99-272, §10001(a), added this paragraph (2).

[89] P.L. 99-272, §10001(a), redesignated the former paragraph (2) as paragraph (3).

[90] P.L. 98-369, §2354(d), struck out "213(e)" and substituted "213(d)".

[91] P.L. 98-573, §232(a), added this subsection (j).

[92] P.L. 99-514, §1895(d)(1)(A), added this sentence.

(B) Period of coverage.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(i) Maximum required period—

(I) General rule for terminations and reduced hours.—In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

(II) Special rule for multiple qualifying events.—If a qualifying event (other than a qualifying event described in paragraph (3)(F))[93] occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

(III) Special rule for certain bankruptcy proceedings.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iv)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.[94]

(IV)[95] General rule for other qualifying events.—In the case of a qualifying event not described in paragraph (3)(B) or (3)(F)[96], the date which is 36 months after the date of the qualifying event.[97]

(ii) End of plan.—The date on which the employer ceases to provide any group health plan to any employee.

(iii) Failure to pay premium.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.[98]

(iv) Group health plan coverage[99] or medicare eligibility.—The date on which the qualified beneficiary first becomes, after the date of the election—

(I) covered under any other group health plan (as an employee or otherwise), or[100]

(II) in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),[101] entitled to benefits under title XVIII of the Social Security Act.

[(v) Stricken.[102]]

(C) Premium requirements.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(i) shall not exceed 102 percent of the applicable premium for such period, and

(ii) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

(D) No requirement of insurability.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(E) Conversion option.—In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(3) Qualifying event.—For purposes of this subsection, the term "qualifying event" means, with respect to any covered employee, any of the following events

---

[93] P.L. 99-509, §9501(b)(1)(A)(i), inserted "(other than a qualifying event described in paragraph (3)(F))".

[94] P.L. 99-509, §9501(b)(1)(A)(iv), inserted this subclause (III).

[95] P.L. 99-509, §9501(b)(1)(A)(iii), redesignated the former subclause (III) as subclause (IV).

[96] P.L. 99-509, §9501(b)(1)(A)(ii), inserted "or (3)(F)".

[97] P.L. 99-514, §1895(d)(2)(A), amended clause (i) in its entirety.

[98] P.L. 99-514, §1895(d)(3)(A), added this sentence.

[99] P.L. 99-514, §1895(d)(4)(A)(iii), struck out "REEMPLOYMENT" and substituted "GROUP HEALTH PLAN COVERAGE".

[100] P.L. 99-514, §1895(d)(4)(A)(ii), amended subclause (I) in its entirety.

[101] P.L. 99-509, §9501(b)(2)(A), inserted "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),".

[102] P.L. 99-514, §1895(d)(4)(A)(i), struck out clause (v).

which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary:

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(C) The divorce or legal separation of the covered employee from the employee's spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iv) within one year before or after the date of commencement of the proceeding.[103]

(4) APPLICABLE PREMIUM.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(B) SPECIAL RULE FOR SELF-INSURED PLANS.—To the extent that a plan is a self-insured plan—

(i) IN GENERAL.—Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

(ii) DETERMINATION ON BASIS OF PAST COST.—If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12 month period ending on the last day of the sixth month of such preceding determination period.

(iii) CLAUSE (ii) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

(C) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(5) ELECTION.—For purposes of this subsection—

(A) ELECTION PERIOD.—The term "election period" means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(ii) is of at least 60 days' duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

---

[103] P.L. 99-509, §9501(a)(1), added subparagraph (F) and this sentence.

(B) Effect of election on other beneficiaries.—Except as otherwise specified in an election, any election of continuation coverage[104] by a qualified beneficiary described in clause (i)(I) or (ii) of paragraph (7)(B) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.[105]

(6) Notice requirements.—In accordance with regulations prescribed by the Secretary—

(A) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

(B) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F)[106] of paragraph (3) with respect to such employee within 30 days of the date of the qualifying event,

(C) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event[107], and

(D) the plan administrator shall notify—

(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F)[108] of paragraph (3), any qualified beneficiary with respect to such event, and

(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of subparagraph (D), any notification shall be made within 14 days of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(7) Definitions.—For purposes of this subsection—

(A) Covered employee.—The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer[109]

(B) Qualified beneficiary.—

(i) In general.—The term "qualified beneficiary" means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(I) as the spouse of the covered employee, or

(II) as the dependent child of the employee.

(ii) Special rule for terminations and reduced employment.—In the case of a qualifying event described in paragraph (3)(B), the term "qualified beneficiary" includes the covered employee.

(iii) Exception for nonresident aliens.—Notwithstanding clauses (i) and (ii), the term "qualified beneficiary" does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship to the individual.[110]

---

[104] P.L. 99-514, §1895(d)(5)(A)(i), inserted "of continuation coverage" to section 162(k)(2)(B).
P.L. 99-509, §9307(c)(2)(B), amended §1895(d)(5)(A) of P.L. 99-514 by striking out "162(k)(2)" and substituting "162(k)(5)".

[105] P.L. 99-514, §1895(d)(5)(A)(ii), added this sentence to section 162(k)(2)(B).
P.L. 99-509, §9307(c)(2)(B) amended §1895(d)(5)(A) of P.L. 99-514 by striking out "162(k)(2)" and substituting "162(k)(5)".

[106] P.L. 99-509, §9501(d)(1), struck out "or (D)" and substituted "(D), or (F)".

[107] P.L. 99-514, §1895(d)(6)(A), inserted "within 60 days after the date of the qualifying event".

[108] See footnote 106.

[109] As in original. No punctuation.

(iv) Special rule for retirees and widows.—In the case of a qualifying event described in paragraph (3)(F), the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(I) as the spouse of the covered employee,

(II) as the dependent child of the employee, or

(III) as the surviving spouse of the covered employee.[111]

(C) Plan administrator.—The term "plan administrator" has the meaning given the term "administrator" by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.[112]

(l) Stock Redemption Expenses.—

(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the redemption of its stock.

(2) Exceptions.—Paragraph (1) shall not apply to—

(A) Certain specific deductions.—Any—

(i) deduction allowable under section 163 (relating to interest), or

(ii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies.—Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.[113]

(m) Special Rules for Health Insurance Costs of Self-Employed Individuals.—

(1) In general.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 25 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(2) Limitations.—

(A) Dollar amount.—No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)).

(B) Required coverage.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.

(C) Other coverage.—Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.

(3) Coordination with medical deduction.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) Termination.—This subsection shall not apply to any taxable year beginning after December 31, 1989.[114]

(n)[115] Cross Reference.—

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.[116]

* * * * * * *

SEC. 164. TAXES.

* * * * * * *

---

[110] P.L. 99-514, §1895(d)(7), added clause (iii).

[111] P.L. 99-509, §9501(c)(1), added clause (iv).

[112] P.L. 97-272, §10001(c), added this subsection (k).

[113] P.L. 99-514, §613(a), added this subsection (l).

[114] P.L. 99-514, §1161(a), added this subsection (m).

[115] P.L. 98-573, §232(a), redesignated subsection (j) as subsection (k).
P.L. 99-272, §10001(c), redesignated subsection (k) as subsection (l).
P.L. 99-514, §613(a), redesignated the former subsection (l) as subsection (m).
P.L. 99-514, §1161(a), redesignated subsection (n) as subsection (m). Executed as if §1161(a) redesignated subsection (m) as subsection (n).

[116] P.L. 98-369, §512(b), added paragraph (3).

(f) DEDUCTION FOR ONE-HALF OF SELF-EMPLOYMENT TAXES.—

(1) IN GENERAL.—In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) DEDUCTION TREATED AS ATTRIBUTABLE TO TRADE OR BUSINESS.—For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.[117]

* * * * * * *

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) Allowance of Deduction.—

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis.—In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property.—For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b)[118]. For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage Limitations.—

(1) Individuals.—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.—Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

---

[117] P.L. 98-21, §124(c)(1), added this subsection (f), applicable to taxable years beginning after December 31, 1989.

[118] P.L. 98-369, §174(b)(5)(A), inserted "or 707(b)".

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (E)[119], or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.—Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30[120] percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.[121]

(C) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS DESCRIBED IN SUBPARAGRAPH (A) OF CERTAIN CAPITAL GAIN PROPERTY.—[122]

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).[123]

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph[124], the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS OF CAPITAL GAIN PROPERTY TO ORGANIZATIONS NOT DESCRIBED IN SUBPARAGRAPH (A).—

---

[119] P.L. 98-369, §301(c)(2)(A), struck out "(D)" and substituted "(E)".
[120] P.L. 98-369, §301(a)(1), struck out "20" and substituted "30".
[121] P.L. 98-369, §301(a)(2), added this sentence.
[122] P.L. 98-369, §301(c)(2)(B), amended the catchline in its entirety.
[123] P.L. 98-369, §301(c)(2)(B), amended clause (i) in its entirety.
[124] P.L. 99-514, §1831, struck out "subparagraph" and substituted "paragraph".

(i) IN GENERAL.—In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) CARRYOVER.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.[125]

(E)[126] Certain private foundations.—The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F)[127] Contribution base defined.—For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations.—In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

(A) this section,

(B) part VIII (except section 248),

(C) any net operating loss carryback to the taxable year under section 172, and

(D) any capital loss carryback to the taxable year under section 1212(a)(1).

(c) Charitable Contribution Defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

---

[125] P.L. 98-369, §301(c)(1), added this subparagraph (D).

[126] P.L. 98-369, §301(c)(1), redesignated the former subparagraph (D) as subparagraph (E).

[127] P.L. 98-369, §301(c)(1), redesignated subparagraph (E) as subparagraph (F).

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contribution" also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of Excess Contributions.—

(1) Individuals.—

(A) In general.—In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.—In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations.—

(A) In general.—Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.—For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain Contributions of Ordinary Income and Capital Gain Property.—

(1) General rule.—The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E)[128],

[129] the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a),[130] 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) Allocation of basis.—For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221, by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

---

[128] P.L. 98-369, §301(c)(2)(C), struck out "(b)(1)(D)" and substituted "(b)(1)(E)".

[129] P.L. 99-514, §301(b)(2), struck out "40 percent (28/46 in the case of a corporation) of". Executed as if the comma after 28/46 was included in the stricken material.

[130] P.L. 98-369, §492(b)(1)(A), struck out "1251(c),".

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hunderd and eighty days prior thereto.

(B) AMOUNT OF REDUCTION.—The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250,[131] or 1252.

(4) SPECIAL RULE FOR CONTRIBUTIONS OF SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(A) LIMIT ON REDUCTION.—In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) QUALIFIED RESEARCH CONTRIBUTIONS.—For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221, but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),[132]

(ii) the property is constructed by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) CONSTRUCTION OF PROPERTY BY TAXPAYER.—For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) CORPORATION.—For purposes of this paragraph, the term "corporation" shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK FOR WHICH MARKET QUOTATIONS ARE READILY AVAILABLE.—

(A) IN GENERAL.—Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) QUALIFIED APPRECIATED STOCK.—Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) DONOR MAY NOT CONTRIBUTE MORE THAN 10 PERCENT OF STOCK OF CORPORATION.—

---

[131] P.L. 98-369, §492(b)(1)(B), struck out "1251,".
[132] P.L. 99-514, §231(f), amended clause (i) in its entirety.

(i) IN GENERAL.—In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) SPECIAL RULE.—For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(D) TERMINATION.—This paragraph shall not apply to contributions made after December 31, 1994.[133]

(f) Disallowance of Deduction in Certain Cases and Special Rules.—

(1) In general.—No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.—

(A) Remainder interest.—In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.—No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts.—In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception.—This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property.—

(A) In general.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property.—For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

---

[133] P.L. 98-369, §301(b), added paragraph (5).

(5) Reduction for certain interest.—If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) DEDUCTIONS FOR OUT-OF-POCKET EXPENDITURES.—No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) RULES SIMILAR TO SECTION 2055(e)(3) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.[134]

(g) Amounts Paid To Maintain Certain Students as Members of Taxpayer's Household.—

(1) In general.—Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations.—

(A) Amount.—Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement.—Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined.—For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152(a).

(4) No other amount allowed as deduction.—No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) QUALIFIED CONSERVATION CONTRIBUTION.—

(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

---

[134] P.L. 98-369, §1022(b), added paragraph (7).

(C) exclusively for conservation purposes.

(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) CONSERVATION PURPOSE DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer in made.

(5) EXCLUSIVELY FOR CONSERVATION PURPOSES.—For purposes of this subsection—

(A) CONSERVATION PURPOSE MUST BE PROTECTED.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) NO SURFACE MINING PERMITTED.—

(i) IN GENERAL.—Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) SPECIAL RULE.—With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.[135]

(6) QUALIFIED MINERAL INTEREST.—For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) RULE FOR NONITEMIZATION OF DEDUCTIONS.—

(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, the applicable percentage of the amount allowable under subsection (a) for the taxable year shall be taken into account as a direct charitable deduction under section 63.

---

[135] P.L. 98-369, §1035(a), amended subparagraph (B) in its entirety.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined under the following table:

For taxable years beginning in—	The applicable percentage is—
1982, 1983 or 1984	25
1985	50
1986 or thereafter	100.

(3) LIMITATION FOR TAXABLE YEARS BEGINNING BEFORE 1985.—In the case of a taxable year beginning before 1985, the portion of the amount allowable under subsection (a) to which the applicable percentage shall be applied—

(A) shall not exceed $100 for taxable years beginning in 1982 or 1983, and

(B) shall not exceed $300 for taxable years beginning in 1984.

In the case of a married individual filing a separate return, the limit under subparagraph (A) shall be $50, and the limit under subparagraph (B) shall be $150.

(4) TERMINATION.—The provisions of this subsection shall not apply to contributions made after December 31, 1986.

(j) STANDARD MILEAGE RATE FOR USE OF PASSENGER AUTOMOBILE.—For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.[136]

(k) DENIAL OF DEDUCTION FOR CERTAIN TRAVEL EXPENSES.—No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.[137]

(l)[138] DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

(1) For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790).

(m)[139] OTHER CROSS REFERENCES.—

(1) For treatment of certain organizations providing child care, see section 501(k).[140]

(2)[141] For charitable contributions of estates and trusts, see section 642(c).

(3)[142] For nondeductibility of contributions by common trust funds, see section 584.

(4)[143] For charitable contributions of partners, see section 702.

(5)[144] For charitable contributions of nonresident aliens, see section 873.

(6)[145] For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7)[146] For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8)[147] For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9)[148] For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

* * * * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

---

[136] P.L. 98-369, §1031(a), added this subsection (j).

[137] P.L. 99-514, §142(d), added this subsection (k).

[138] P.L. 98-369, §1031(a), redesignated subsection (j) as subsection (k).
P.L. 99-514, §142(d), redesignated subsection (k) as subsection (l).

[139] P.L. 98-369, §1031(a), redesignated subsection (k) as subsection (l).
P.L. 99-514, §142(d), redesignated subsection (l) as subsection (m).

[140] P.L. 98-369, §1032(b)(1), added this paragraph (1) to subsection (k) as redesignated by §1031. Executed as if amendment was made before the redesignation.

[141] P.L. 98-369, §1032(b)(1), redesignated paragraph (1) as paragraph (2).

[142] P.L. 98-369, §1032(b)(1), redesignated paragraph (2) as paragraph (3).

[143] P.L. 98-369, §1032(b)(1), redesignated paragraph (3) as paragraph (4).

[144] P.L. 98-369, §1032(b)(1), redesignated paragraph (4) as paragraph (5).

[145] P.L. 98-369, §1032(b)(1), redesignated paragraph (5) as paragraph (6).

[146] P.L. 98-369, §1032(b)(1), redesignated paragraph (6) as paragraph (7).

[147] P.L. 98-369, §1032(b)(1), redesignated paragraph (7) as paragraph (8).

[148] P.L. 98-369, §1032(b)(1), redesignated paragraph (8) as paragraph (9).

* * * * * * *

SEC. 217. MOVING EXPENSES.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) DEFINITION OF MOVING EXPENSES.—

(1) IN GENERAL.—For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence,

(B) of traveling (including meals and lodging) from the former residence to the new place of residence,

(C) of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence,

(D) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

(E) constituting qualified residence sale, purchase, or lease expenses.

(2) QUALIFIED RESIDENCE SALE, ETC., EXPENSES.—For purposes of paragraph (1)(E), the term "qualified residence sale, purchase, or lease expenses" means only reasonable expenses incident to—

(A) the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence (not including expenses for work performed on such residence in order to assist in its sale) which (but for this subsection and subsection (e)) would be taken into account in determining the amount realized on the sale or exchange,

(B) the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which (but for this subsection and subsection (e)) would be taken into account in determining—

(i) the adjusted basis of the new residence, or

(ii) the cost of a loan (but not including any amounts which represent payments or prepayments of interest),

(C) the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence, or

(D) the acquisition of a lease by the taxpayer or his spouse on property used by the taxpayer as his new residence in the general location of the new principal place of work (not including amounts which are payments or prepayments of rent).

(3) LIMITATIONS.—

(A) DOLLAR LIMITS.—The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed $1,500. The aggregate amount allowable as a deduction under subsection (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed $3,000, reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

(B) HUSBAND AND WIFE.—If a husband and wife both commence work at a new principal place of work within the same general location, subparagraph (A) shall be applied as if there was only one commencement of work. In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$750" for "$1,500", and by substituting "$1,500" for "$3,000".

(C) INDIVIDUALS OTHER THAN TAXPAYER.—In the case of any individual other than the taxpayer, expenses referred to in subparagraphs (A) through (D) of paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) CONDITIONS FOR ALLOWANCE.—No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 35 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 35 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for Application of Subsection (c)(2).—

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

(e) Denial of Double benefit.—The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).

(f) Rules for Self-Employed Individuals.—

(1) Definition.—For purposes of this section, the term "self-employed individual" means an individual who performs personal services—

(A) as the owner of the entire interest in an unincorporated trade or business, or

(B) as a partner in a partnership carrying on a trade or business.

(2) Rule for application of subsections (b)(1)(c) and (d).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.

(g) Rules for Members of the Armed Forces of the United States.—In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his

dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location;

(B) for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and

(C) without regard to the limitations under subsection (c).

(h) SPECIAL RULES FOR FOREIGN MOVES.—

(1) INCREASE IN LIMITATIONS.—In the case of a foreign move—

(A) subsection (b)(1)(D) shall be applied by substituting "90 consecutive days" for "30 consecutive days",

(B) subsection (b)(3)(A) shall be applied by substituting "$4,500" for "$1,500" and by substituting "$6,000" for "$3,000", and

(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: "In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$2,250' for '$4,500', and by substituting '$3,000' for '$6,000'."

(2) ALLOWANCE OF CERTAIN STORAGE FEES.—In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(3) FOREIGN MOVE.—For purposes of this subsection, the term "foreign move" means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(4) UNITED STATES DEFINED.—For purposes of this subsection and subsection (i), the term "United States" includes the possessions of the United States.

(i) ALLOWANCE OF DEDUCTIONS IN CASE OF RETIREES OR DECEDENTS WHO WERE WORKING ABROAD.—

(1) IN GENERAL.—In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) QUALIFIED RETIREE MOVING EXPENSES.—For purposes of paragraph (1), the term "qualified retiree moving expenses" means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) QUALIFIED SURVIVOR MOVING EXPENSES.—For purposes of paragraph (1), the term "qualified survivor moving expenses" means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

* * * * * * *

SEC. 219. RETIREMENT SAVINGS.

* * * * * * *

(b) MAXIMUM AMOUNT OF DEDUCTION.—* * *

(2) SPECIAL RULE FOR EMPLOYER CONTRIBUTIONS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—This section shall not apply with respect to an employer contribution to a simplified employee pension.[149]

---

[149] P.L. 99-514, §1108(g)(2), amended paragraph (2) in its entirety.

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination);

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).[150]

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(7)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

---

[150] P.L. 99-514, §1114(b)(7), amended paragraph (4) in its entirety.

(i) Contributions.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) Benefits.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.[151]

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit[152] plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) Required distributions.—

(A) In general.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) Required distribution where employee dies before entire interest is distributed.—

(i) Where distributions have begun under subparagraph (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-year rule for other cases.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

---

[151] P.L. 99-514, §1111(b), amended paragraph (5) in its entirety.

[152] P.L. 99-514, §1119(a), struck out "pension" and substituted "defined benefit".

(iv) Special rule for surviving spouse of employee.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70 1/2, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required beginning date.—For purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2.[153]

(D) Life expectancy.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) Designated beneficiary.—For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) Treatment of payments to children.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).[154]

(G) Treatment of incidental death benefit distributions.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.[155]

(10) Other requirements.—

(A) Plans benefiting owner-employees.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) Top-heavy plans.—

(i) In general.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) Plans which may become top-heavy.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) Exemption for governmental plans.—This subparagraph shall not apply to any governmental plan.[156]

(11) Requirement of joint and survivor annuity and preretirement survivor annuity.—

(A) In general.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date[157], the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) Plans to which paragraph applies.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

---

[153] P.L. 99-514, §1121(b), amended subparagraph (C) in its entirety.

[154] P.L. 98-369, §521(a)(1), amended paragraph (9) in its entirety.

[155] P.L. 99-514, §1852(a)(6), added subparagraph (G).

[156] P.L. 98-369, §524(d)(1), added clause (iii).

[157] P.L. 99-514, §1898(b)(3)(A), struck out "retires under the plan" and substituted "does not die before the annuity starting date".

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant)[158] is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2)[159], to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984)[160] of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.[161]

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.[162]

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.[163]

(E)[164] CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.[165]

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust[166] shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

---

[158] P.L. 99-514, §1898(b)(7)(A), inserted "(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

[159] P.L. 99-514, §1898(b)(13)(A), struck out "(A)".

[160] P.L. 99-514, §1898(b)(2)(A)(i), inserted "(in a transfer after December 31, 1984)".

[161] P.L. 99-514, §1898(b)(2)(A)(ii), added this sentence.

[162] P.L. 99-514, §1898(b)(14)(A), added this subparagrph (D).

[163] P.L. 99-514, §1145(a), added this subparagraph (E).

[164] P.L. 99-514, §1145(a), redesignated subparagraph (D) as subparagraph (E).
P.L. 99-514, §1898(b)(14)(A), redesignated subparagraph (D) as subparagraph (E). As in original.

[165] P.L. 98-397, §203(a), amended paragraph (11) in its entirety.

[166] P.L. 98-397, §204(a)(1), struck out "(13) A trust" and substituted
"(13) ASSIGNMENT AND ALIENATION.—

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.[167]

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a[168] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).[169]

[(18) Repealed.[170]]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant

---

(A) IN GENERAL.—A trust".
P.L. 98-397, §204(a)(2), realigned the margin for subparagraph (A).

[167] P.L. 98-397, §204(a)(3), added subparagraph (B).

[168] As in original. Probably should be "A".

[169] P.L. 99-514, §1106(d)(1), added paragraph (17).

[170] P.L. 97-248, 96 Stat. 511; September 3, 1982.

unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes a qualified total distribution described in section 402(a)(5)(E)(i)(I)[171]. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution.

[(21) Repealed.[172]]

(22) If[173] a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not publicly traded, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409[174]. The requirements of subsection (e) of section 409 shall not apply to any employee of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation.[175]

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.[176]

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6)[177].

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.[178]

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

(i) 50 employees of the employer, or

(ii) 40 percent or more of all employees of the employer.

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

---

[171] P.L. 99-514, §1852(b)(8), struck out "qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)" and substituted "qualified total distribution described in section 402(a)(5)(E)(i)(I)".

[172] P.L. 99-514, §1171(b)(5), repealed paragraph (21).

[173] P.L. 99-514, §1899A(10), struck out "if" and substituted "If".

[174] P.L. 98-369, §491(e)(4), struck out "409A" and substituted "409".

[175] P.L. 99-514, §1176(a), added this sentence.

[176] P.L. 99-514, §1174(c)(2)(A), amended paragraph (23) in its entirety.

[177] P.L. 98-369, §211(b)(5), struck out "805(d)(6)" and substituted "818(a)(6)".

[178] P.L. 98-397, §301(b), added paragraph (25).

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) ELIGIBILITY TO PARTICIPATE.—In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.

(D) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(E) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(F) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.[179]

(27) The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.[180]

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i).

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term "qualified election period" means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st[181] became a qualified participant).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).[182]

---

[179] P.L. 99-514, §1112(b), added paragraph (26).

[180] P.L. 99-514, §1136(a), added paragraph (27).

[181] As in original.

[182] P.L. 99-514, §1175(a)(1), added paragraph (28).

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

(1) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—

(A) IN GENERAL.—The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) SELF-EMPLOYED INDIVIDUAL.—The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404[183] to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).[184]

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

[(B) Repealed.[185]]

(C) INCOME FROM DISPOSITION OF CERTAIN PROPERTY.—For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) OWNER-EMPLOYEE.—The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

---

[183] P.L. 99-514, §1848(b), struck out "sections 404 and 405(c)" and substituted "section 404".

[184] P.L. 98-21, §124(c)(4)(A), inserted clause (vi), applicable to taxable years beginning after December 31, 1989.

[185] P.L. 89-908, §204(c); 80 Stat. 1577.

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen.—For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).[186]

(d) Additional Requirements for Qualification of Trusts and Plans Benefiting Owner-Employees.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(2) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (1)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(3) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed.[187]]

(f) Certain Custodial Accounts and Contracts.—For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)[188]) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

---

[186] P.L. 99-514, §1143(a), added paragraph (6).

[187] P.L. 98-369, §713(d)(3), repealed subsection (e).

[188] P.L. 98-369, §713(c)(2)(A), struck out "subsection (d)(1)" and substituted "section 408(n)".

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) ANNUITY DEFINED.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) MEDICAL, ETC., BENEFITS FOR RETIRED EMPLOYEES AND THEIR SPOUSES AND DEPENDENTS.—Under regulations prescribed by the Secretary, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,[189]

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and[190]

(6) in the case of an employee who is a key employee[191] a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee[192]) are only payable to such employee (and his spouse and dependents) from such separate account.[193]

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i).[194]

(i) CERTAIN UNION-NEGOTIATED PENSION PLANS.—In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed.[195]]

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) GENERAL RULE.—A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural electric cooperative plan[196] shall not be considered as not

---

[189] P.L. 98-369, §528(b), struck out "and".

[190] P.L. 98-369, §528(b), struck out the period and substituted ", and".

[191] P.L. 99-514, §1852(h)(1)(A), struck out "5-percent owner" and substituted "key employee".

[192] See footnote 191.

[193] P.L. 98-369, §528(b), added paragraph (6).

[194] P.L. 99-514, §1852(h)(1)(B), amended this sentence in its entirety.

[195] P.L. 97-248, 96 Stat. 512; September 3, 1982.

[196] P.L. 98-369, §527(b)(1), inserted "(or a pre-ERISA money purchase plan)".

P.L. 99-514, §1879(g)(1), struck out "(or a pre-ERISA money purchase plan)" and substituted ", a pre-ERISA money purchase plan, or a rural electric cooperative plan".

satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural electric cooperative plan[197] which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which—

(i) amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than—

(I) separation from service, death, or disability,

(II) termination of the plan without establishment of a successor plan,

(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,

(V) in the case of a profit-sharing or stock bonus plan, the attainment of age 59 1/2, or

(VI) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the employee, and

(ii) amounts will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;[198]

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is[199] nonforfeitable, and[200]

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).[201]

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of[202] section 410(b)(1), and

(ii) the actual deferral percentage for highly compensated employees (as defined in paragraph (5)[203]) for such year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25[204].

(II) The excess of the actual deferral percentage for the group of highly compensated employees over that of all other eligible employees is not more than 2[205] percentage points, and the actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2[206].

---

[197] See footnote 196.

[198] P.L. 99-514, §1116(b)(1), amended subparagraph (B) in its entirety.
P.L. 99-514, §1116(b)(2), struck out "and".

[199] P.L. 99-514, §1852(g)(3), struck out "are" and substituted "is".

[200] P.L. 99-514, §1116(b)(2), struck out the period and substituted ", and".

[201] P.L. 99-514, §1116(b)(2), added subparagraph (D).

[202] P.L. 99-514, §1112(d)(1), struck out "subparagraph (A) or (B) of".

[203] P.L. 99-514, §1116(g)(2), struck out "(4)" and substituted "(5)".

[204] P.L. 99-514, §1116(a)(1), struck out "1.5" and substituted "1.25".

[205] P.L. 99-514, §1116(a)(2), struck out "3" and substituted "2".

[206] P.L. 99-514, §1116(a)(3), struck out "2.5" and substituted "2".

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subpargraph.

If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement.[207]

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the rations (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.[208]

(C) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in[209] 401(m)(4)(A)) which meets the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).[210]

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.[211]

(4) OTHER REQUIREMENTS.—

(A) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit provided by such employer is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) any organization exempt from tax under this subtitle.

(C) COORDINATION WITH OTHER PLANS.—Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).[212]

(5) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).[213]

(6)[214] PRE-ERISA MONEY PURCHASE PLAN.—For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

---

[207] P.L. 98-369, §527(a), amended subparagraph (A) in its entirety.
P.L. 99-514, §1852(g)(2), amended this sentence in its entirety.

[208] P.L. 99-514, §1116(d)(3), struck out "For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year.".

[209] As in original.

[210] P.L. 99-514, §1116(e), added subparagraph (C).

[211] P.L. 99-514, §1852(g)(1), added this second subparagraph (C).

[212] P.L. 99-514, §1116(b)(3), added this paragraph (4).

[213] P.L. 99-514, §1116(b)(3), redesignated paragraph (4) as paragraph (5).
P.L. 99-514, §1116(d)(1), amended paragraph (5) in its entirety.

[214] P.L. 99-514, §1116(b)(3), redesignated paragraph (5) as paragraph (6).

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.[215]

(7)[216] Rural electric cooperative plan.—For purposes of this subsection, the term "rural electric cooperative plan" means any pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)), and

(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives.[217]

(8) Arrangement not disqualified if excess contributions distributed.—

(A) In general.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions.—For purposes of subparagraph (A), the term "excess contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of the excess contributions attributable to each of such employees.

(D) Additional tax under section 72(t) not to apply.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Cross reference.—

For excise tax on certain excess contributions, see section 4979.[218]

(9) Compensation.—For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).[219]

(l) Permitted Disparity in Plan Contributions or Benefits.—

(1) In general.—The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan.—

(A) In general.—A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages.—For purposes of this paragraph—

(i) Excess contribution percentage.—The term "excess contribution percentage" means the percentage of compensation which is contributed under the plan with respect to that portion of each participant's compensation in excess of the integration level.

---

[215] P.L. 98-369, §527(b)(2), added paragraph (5).

[216] P.L. 99-514, §1116(b)(3), redesignated paragraph (6) as paragraph (7).

[217] P.L. 99-514, §1879(g)(2), added this paragraph.

[218] P.L. 99-514, §1116(c)(1), added paragraph (8).

[219] P.L. 99-514, §1116(d)(2), added paragraph (9).

(ii) BASE CONTRIBUTION PERCENTAGE.—The term "base contribution percentage" means the percentage of compensation contributed under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) DEFINED BENEFIT PLAN.—A defined benefit plan meets the requirements of this paragraph if—

(A) EXCESS PLANS.—

(i) IN GENERAL.—In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) BENEFIT PERCENTAGES.—For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits rather than contributions.

(B) OFFSET PLANS.—In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) DEFINITIONS RELATING TO PARAGRAPH (3).—For purposes of paragraph (3)—

(A) MAXIMUM EXCESS ALLOWANCE.—The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) MAXIMUM OFFSET ALLOWANCE.—The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 percent of the participant's final average compensation, and

(ii) in the case of total benefits, 3/4 percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) REDUCTIONS.—

(i) IN GENERAL.—The Secretary shall prescribe regulations requiring the reduction of the 3/4 percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) BASIS OF REDUCTIONS.—Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) OFFSET PLAN.—The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) INTEGRATION LEVEL.—

(i) IN GENERAL.—The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) LIMITATION.—The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) LEVEL TO APPLY TO ALL PARTICIPANTS.—A plan's integration level shall apply with respect to all participants in the plan.

(iv) MULTIPLE INTEGRATION LEVELS.—Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) COMPENSATION.—The term "compensation" has the meaning given such term by section 414(s).

(C) AVERAGE ANNUAL COMPENSATION.—The term "average annual compensation" means the greater of—

(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years.

(D) FINAL AVERAGE COMPENSATION.—

(i) IN GENERAL.—The term "final average compensation" means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) LIMITATION.—A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) COVERED COMPENSATION.—

(i) IN GENERAL.—The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains age 65.

(ii) COMPUTATION FOR ANY YEAR.—For purposes of clause (i), the determination for any year preceding the year in which the employee attains age 65 shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains age 65.

(F) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 233(d) of the Social Security Act).

(6) SPECIAL RULE FOR PLAN MAINTAINED BY RAILROADS.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.[220]

(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) IN GENERAL.—A plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) REQUIREMENTS.—

(A) CONTRIBUTION PERCENTAGE REQUIREMENT.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees, or

---

[220] P.L. 99-514, §1111(a), amended subsection (l) in its entirety.

(ii) the lesser of 200 percent of such percentage for all other eligible employees, or such percentage for all other eligible employees plus 2 percentage points.

(B) MULTIPLE PLANS TREATED AS A SINGLE PLAN.—If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which such contributions are made, all such contributions shall be aggregated for purposes of this subsection.

(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer.

(4) DEFINITIONS.—For purposes of this subsection—

(A) MATCHING CONTRIBUTION.—The term "matching contribution" means—

(i) any employer contribution made to the plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to the plan on behalf of an employee on account of an employee's elective deferral.

(B) ELECTIVE DEFERRAL.—The term "elective deferral" means any employer contribution described in section 402(g)(3)(A).

(C) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) EMPLOYEES TAKEN INTO CONSIDERATION.—

(A) IN GENERAL.—Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) CERTAIN NONPARTICIPANTS.—If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(6) PLAN NOT DISQUALIFIED IF EXCESS AGGREGATE CONTRIBUTIONS DISTRIBUTED BEFORE END OF FOLLOWING PLAN YEAR.—

(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) COORDINATION WITH SUBSECTION (k) AND 402(g).—The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) TREATMENT OF DISTRIBUTIONS.—

(A) ADDITIONAL TAX OF SECTION 72(t) NOT APPLICABLE.—No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (8).

(B) EXCLUSION OF EMPLOYEE CONTRIBUTIONS.—Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term "alternative limitation" means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.

(10) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.[221]

(n)[222] COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.[223]

(o)[224] CROSS REFERENCE.—For exemption from tax of a trust qualified under this section, see section 501(a).

* * * * * * *

SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

* * * * * * *

(8) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee or as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

* * * * * * *

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) DISTRIBUTEE TAXABLE UNDER SECTION 72.—If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).[225]

---

[221] P.L. 99-514, §1117(a), added this subsection (m).
[222] P.L. 99-514, §1117(a), redesignated subsection (m) as subsection (n).
[223] P.L. 99-514, §1898(c)(3), added this subsection.
[224] P.L. 99-514, §1898(c)(3), redesignated subsection (o) as subsection (n).
P.L. 99-514, §1117(a), redesignated subsection (n) as subsection (o).
[225] P.L. 99-514, §1122(d)(1), amended paragraph (1) in its entirety.

[(2) Repealed.[226]]

(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,[227]

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (G)[228] of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(b) Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—

(1) General Rule.—If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a),[229]

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, and[230]

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (10),[231]

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).[232] For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii)[233] shall not be considered contributed by such employer.

(2) Exclusion allowance.—

(A) In general.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

(B) Election to have allowance determined under section 415 rules.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

---

[226] P.L. 99-514, §1122(b)(1)(B), repealed paragraph (2).
[227] P.L. 98-369, §522(a)(2), amended clause (i) in its entirety.
[228] P.L. 98-369, §522(d)(9), struck out "(E)" and substituted "(F)".
P.L. 99-514, §1852(a)(5)(B)(i), struck out "(F)" and substituted "(G)".
[229] P.L. 99-514, §1120(a), struck out "and".
[230] P.L. 99-514, §1120(a), inserted "and".
[231] P.L. 99-514, §1120(a), added subparagraph (D).
[232] P.L. 99-514, §1122(d)(2), amended this sentence in its entirety.
[233] P.L. 98-369, §491(d)(12), struck out "or 409(b)(3)(C)".

(C) NUMBER OF YEARS OF SERVICE FOR DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTERS OR LAY EMPLOYEES.—For purposes of this subsection and section 415(c)(4)(A)—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

(D) ALTERNATIVE EXCLUSION ALLOWANCE.—

(i) IN GENERAL.—In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of—

(I) $3,000, or

(II) the includible compensation of such individual.

(ii) SUBPARAGRAPH NOT TO APPLY TO INDIVIDUALS WITH ADJUSTED GROSS INCOME OVER $17,000.—This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds $17,000.

(iii) SPECIAL RULE FOR FOREIGN MISSIONARIES.—In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.

(3) Includible compensation.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section[234] 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) Years of service.—In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract.—If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable.—For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be

---

[234] P.L. 98-21, §122(c)(4), struck out "sections 105(d) and" and substituted "section".

treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(7) Custodial accounts for regulated investment company stock.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),[235] encounters financial hardship.

(B) Account treated as plan.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company.—For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

[(D) Stricken.[236]]

(8) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,[237]

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) SPECIAL RULES FOR PARTIAL DISTRIBUTIONS.—

(i) IN GENERAL.—In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

(ii) TOTAL DISTRIBUTION.—For purposes of subparagraph (A), the term "total distribution" means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).[238]

(C) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B), (C), and[239] (F)(i)[240], of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(D) REQUIRED DISTRIBUTIONS NOT ELIGIBLE FOR ROLLOVER TREATMENT.—Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under paragraph (10).[241]

(9) RETIREMENT INCOME ACCOUNTS PROVIDED BY CHURCHES, ETC.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

---

[235] P.L. 99-514, §1123(c)(2), inserted "in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),".

[236] P.L. 98-369, §521(c), added subparagraph (D).

P.L. 99-514, §1852(a)(3)(B), struck out subparagraph (D).

[237] P.L. 98-369, §522(a)(3), amended clause (i) in its entirety.

[238] P.L. 98-369, §522(d)(10), amended subparagraph (B) in its entirety.

[239] P.L. 99-514, §1852(b)(10), inserted "and".

[240] P.L. 97-448, §103(c)(8)(B), inserted "(D)(v),".

P.L. 98-369, §522(d)(11), struck out "(D)(v), and (E)(i)" and substituted "(F)(i)".

[241] P.L. 99-514, §1852(a)(5)(B)(ii), added subparagraph (D).

(B) RETIREMENT INCOME ACCOUNT.—For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), and (26) of section 401(a) and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.

(B) CHURCH.—For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).[242]

(10) DISTRIBUTION REQUIREMENTS.—Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of section 401(a)(9) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account).[243]

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59 1/2, SEPARATION FROM SERVICE, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59 1/2, separates from service, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

(B) in the case of hardship.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.[244]

* * * * * * *

[SEC. 405. Repealed.[245]]

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

* * * * * * *

(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

(1) IN GENERAL.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

---

[242] P.L. 99-514, §1120(b), added paragraph (10).

[243] P.L. 99-514, §1852(a)(3)(A), added a second paragraph (10).

[244] P.L. 99-514, §1123(c)(1), added paragraph (11).

[245] P.L. 98-369, §491(a), repealed §405.

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.[246]

(2) PARTICIPATION REQUIREMENTS.—This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $300 in compensation (within the meaning of section 414(q)(7)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.[247]

(3) CONTRIBUTIONS MAY NOT DISCRIMINATE IN FAVOR OF THE HIGHLY COMPENSATED, ETC.—

(A) IN GENERAL.—The requirements of this paragraph are met with respect to a simplified employee pension for a[248] year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).[249]

(B) SPECIAL RULES.—For purposes of subparagraph (A)—

(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(C) CONTRIBUTIONS MUST BEAR UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), and except as provided in subparagraph (D),[250] employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6))[251] shall be considered discriminatory unless contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.[252]

(D) PERMITTED DISPARITY.—For purposes of subparagraph (C), the rules of section 401(l)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).[253]

[(E) Stricken.[254]]

(4) WITHDRAWALS MUST BE PERMITTED.—A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) CONTRIBUTIONS MUST BE MADE UNDER WRITTEN ALLOCATION FORMULA.—The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

---

[246] P.L. 98-369, §713(f)(2), amended paragraph (1) in its entirety.

[247] P.L. 99-514, §1108(d), amended paragraph (2) in its entirety.

[248] P.L. 99-514, §1108(g)(4), struck out "calendar".

[249] P.L. 99-514, §1108(g)(1)(A), struck out "employee who is—" and clauses (i), (ii), (iii), and (iv), and substituted "highly compensated employee (within the meaning of section 414(q))".

[250] P.L. 99-514, §1108(g)(1)(B)(i), inserted "and except as provided in subparagraph (D),".

[251] P.L. 99-514, §1108(g)(1)(B)(ii), inserted "(other than contributions under an arrangement described in paragraph (6))".

[252] P.L. 98-369, §713(f)(5)(B), inserted "The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).".

P.L. 99-514, §1108(g)(1)(B)(iii), struck out that sentence.

[253] P.L. 99-514, §1108(g)(1)(C), amended subparagraph (D) in its entirety.

[254] P.L. 99-514, §1108(g)(1)(C), struck out subparagraph (E).

(A) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

(i) an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash,

(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.

(B) EXCEPTION WHERE MORE THAN 25 EMPLOYEES.—This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees at any time during the preceding year.

(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS.—

(i) IN GENERAL.—Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) EXCESS CONTRIBUTION.—For purposes of clause (i), the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (within the meaning of section 414(s)) for the year.

(E) EXCEPTION FOR STATE AND LOCAL AND TAX-EXEMPT PENSIONS.—This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).[255]

(7) DEFINITIONS.—For purposes of this subsection and subsection (1)—

(A) EMPLOYEE, EMPLOYER, OR OWNER-EMPLOYEE.—The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c).

(B) COMPENSATION.—The term "compensation" means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).

(C) YEAR.—The term "year" means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.[256]

(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraph (3)(C) at the same time and in the same manner as under section 415(d).[257]

(9) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.[258]

* * * * * * *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

* * * * * * *

---

[255] P.L. 99-514, §1108(a), added paragraph (6).
[256] P.L. 99-514, §1108(f), added subparagraph (C).
[257] P.L. 99-514, §1108(e), added paragraph (8).
[258] P.L. 99-514, §1108(g)(6), added paragraph (9).

(h) * * *

(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) any[259] corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984[260], or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or[261]

(B) is described in subsection (1).[262]

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their

---

[259] As in original. Should be "Any".

[260] P.L. 99-514, §1899A(15), struck out "the date of the enactment of the Tax Reform Act of 1984" and substituted "July 18, 1984".

[261] P.L. 98-369, §1079, amended subparagraph (A) in its entirety.

[262] P.L. 98-369, §2813(b)(2), amended paragraph (1) in its entirety.

dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,[263]

(iii) mutual savings banks not having capital stock represented by shares, or[264]

(iv) mutual savings banks described in section 591(b)[265]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

---

[263] P.L. 99-514, §1879(k)(1)(A), struck out "or".
[264] P.L. 99-514, §1879(k)(1)(B), struck out the period and substituted ", or".
[265] P.L. 99-514, §1879(k)(1)(C), added clause (iv). As in original. No punctuation.

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).[266]

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q))[267], and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q))[268]. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

---

[266] P.L. 99-514, §1024(b), amended paragraph (15) in its entirety.

[267] P.L. 99-514, §1114(b)(14), struck out "officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees" and substituted "highly compensated employees (within the meaning of section 414(q))".

[268] See footnote 267.

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q))[269], [270]

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q))[271]. A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and[272]

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions, and

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof).

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.[273]

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an[274] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it

---

[269] See footnote 267.

[270] P.L. 99-514, §1109(a), struck out "and".

[271] See footnote 267.

[272] P.L. 99-514, §1109(a), struck out the period and substituted ", and".

[273] P.L. 99-514, §1109(a), added subparagraph (D), and this sentence.

[274] As in original. Should be "An".

provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) any[275] association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).[276]

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

---

[275] As in original. Should be "Any".

[276] P.L. 99-272, §11012(b), added paragraph (24).

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,

(iv) any organization described in paragraph (3), or

(v) any organization described in this paragraph.

(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.[277]

(d) Religious and Apostolic Organizations.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative Hospital Service Organizations.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8 1/2 months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

---

[277] P.L. 99-514, §1603(a), added paragraph (25).

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt for taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative Service Organizations of Operating Educational Organizations.—For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of Agricultural.—For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by Public Charities to Influence Legislation.—

(1) General rule.—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions.—For purposes of this subsection—

(A) Lobbying expenditures.—The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount.—The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures.—The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount.—The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies.—This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply.—An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section

509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) DISQUALIFIED ORGANIZATIONS.—For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) YEARS FOR WHICH ELECTION IS EFFECTIVE.—An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) NO EFFECT ON CERTAIN ORGANIZATIONS.—With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization, nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) AFFILIATED ORGANIZATIONS.—For rules regarding affiliated organizations, see section 4911(f).

(i) PROHIBITION OF DISCRIMINATION BY CERTAIN SOCIAL CLUBS.—Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) SPECIAL RULES FOR CERTAIN AMATEUR SPORTS ORGANIZATIONS.—

(1) IN GENERAL.—In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) QUALIFIED AMATEUR SPORTS ORGANIZATION DEFINED.—For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) TREATMENT OF CERTAIN ORGANIZATIONS PROVIDING CHILD CARE.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.[278]

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).[279]

(m) CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE NOT EXEMPT FROM TAX.—

---

[278] P.L. 98-369, §1032(a), inserted this subsection (k).

[279] P.L. 98-369, §2813(b)(1), inserted this subsection (l).

(1) DENIAL OF TAX EXEMPTION WHERE PROVIDING COMMERCIAL-TYPE INSURANCE IS SUBSTANTIAL PART OF ACTIVITIES.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) OTHER ORGANIZATIONS TAXED AS INSURANCE COMPANIES ON INSURANCE BUSINESS.—In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) COMMERCIAL-TYPE INSURANCE.—For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches, and

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees.

(4) INSURANCE INCLUDES ANNUITIES.—For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.[280]

(n)[281] Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

* * * * * * *

SEC. 509. PRIVATE FOUNDATION DEFINED.

(a) GENERAL RULE.—For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

---

[280] P.L. 99-514, §1012(a), added this subsection (m).

[281] P.L. 97-248, §286(a), redesignated the former subsection (j) as subsection (k).
P.L. 98-369, §1032(a), redesignated the former subsection (k) as subsection (l).
P.L. 98-369, §2813(b)(1), redesignated the former subsection (l) as subsection (m).
P.L. 99-514, §1012(a), redesignated the former subsection (m) as subsection (n).

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

* * * * * * *

SEC. 513. UNRELATED TRADE OR BUSINESS.

(a) General Rule.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

* * * * * * *

SEC. 631. GAIN OR LOSS IN THE CASE OF TIMBER, COAL, OR DOMESTIC IRON ORE.

(a) Election to Consider Cutting as Sale or Exchange.—If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right on the first day of such year and for a period of more than 6 months before such cutting[282]) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of Timber with a Retained Economic Interest.—In the case of the disposal of timber held for more than 6 months[283] before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

---

[282] P.L. 98-369, §1001(c)(1), struck out "for a period of more than 1 year" and substituted "on the first day of such year and for a period of more than 6 months before such cutting".

[283] P.L. 98-369, §1001(c)(2), struck out "1 year" and substituted "6 months".

(c) DISPOSAL OF COAL OR DOMESTIC IRON ORE WITH A RETAINED ECONOMIC INTEREST.—In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months[284] before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such[285] owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal[286]—

(1) to a person whose relationship to the person disposing of such iron ore or coal[287] would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal[288].

* * * * * * *

SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) GENERAL RULE.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 6 months[289],

(2) gains and losses from sales or exchanges of capital assets held for more than 6 months[290],

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which there is a deduction under part VIII of subchapter B,[291]

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

---

[284] See footnote 283.

[285] P.L. 99-514, §311(b)(3), struck out "Such" and substituted "If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such".

[286] P.L. 98-369, §178(a), inserted "or coal".

[287] See footnote 286.

[288] See footnote 286.

[289] P.L. 98-369, §1001(b)(9), struck out "1 year" and substituted "6 months".

[290] P.L. 98-369, §1001(b)(9), struck out "1 year" and substituted "6 months". Executed as if §1001(b)(9), struck out "9 months" and substituted "6 months".

[291] P.L. 99-514, §612(b)(5), amended paragraph (5) in its entirety.

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

* * * * * * *

SEC. 707. TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP.

* * * * * * *

(c) Guaranteed Payments.—To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

* * * * * * *

SEC. 761. TERMS DEFINED.

(a) Partnership.—For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner.—For purposes of this subtitle, the term "partner" means a member of a partnership.

* * * * * * *

SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) Gross Income From Sources Within United States.—The following items of gross income shall be treated as income from sources within the United States:

* * * * * * *

(8) Social security benefits.—Any social security benefit (as defined in section 86(d)).[292]

* * * * * * *

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) Income Not Connected With United States Business—30 Percent Tax.

* * * * * * *

(3) Taxation of social security benefits.—For purposes of this section and section 1441—

(A) one-half of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act)[293], and

(B) section 86 shall not apply.[294]

For treatment of certain citizens of possessions of the United States, see section 932(c).[295]

* * * * * * *

SEC. 911. CITIZENS OR RESIDENTS OF THE UNITED STATES LIVING ABROAD.

(a) Exclusion From Gross Income.—At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign Earned Income.—

---

[292] P.L. 98-21, §121(d), added paragraph (8).
[293] P.L. 98-21, §335(b)(2)(B), inserted "(notwithstanding section 207 of the Social Security Act)".
[294] P.L. 98-21, §121(c)(1), added paragraph (3).
[295] P.L. 99-272, §12103(b), added this sentence.

(1) DEFINITION.—For purposes of this section—

(A) IN GENERAL.—The term "foreign earned income" with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) CERTAIN AMOUNTS NOT INCLUDED IN FOREIGN EARNED INCOME.—The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) LIMITATION ON FOREIGN EARNED INCOME.—

(A) IN GENERAL.—The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate of $70,000.[296]

(B) ATTRIBUTION TO YEAR IN WHICH SERVICES ARE PERFORMED.—For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) TREATMENT OF COMMUNITY INCOME.—In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(c) HOUSING COST AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year, over

(B) an amount equal to the product of—

(i) 16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS-14, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) HOUSING EXPENSES.—

(A) IN GENERAL.—The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) SECOND FOREIGN HOUSEHOLD.—

(i) IN GENERAL.—Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) SEPARATE HOUSEHOLD FOR SPOUSE AND DEPENDENTS.—If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

---

[296] P.L. 99-514, §1233(a), amended subparagraph (A) in its entirety.

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(3) SPECIAL RULES WHERE HOUSING EXPENSES NOT PROVIDED BY EMPLOYER.—

(A) IN GENERAL.—To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) LIMITATION.—For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-YEAR CARRYOVER OF HOUSING AMOUNTS NOT ALLOWED BY REASON OF SUBPARAGRAPH (B).—

(i) IN GENERAL.—The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) LIMITATION.—For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) EMPLOYER PROVIDED AMOUNTS.—For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) FOREIGN EARNED INCOME.—For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED INDIVIDUAL.—The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) TAXPAYER ENGAGED IN TRADE OR BUSINESS.—In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) TAX HOME.—The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) WAIVER OF PERIOD OF STAY IN FOREIGN COUNTRY.—Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A) and (c)(1)(B)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence.—If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits.—No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income.—The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country.—

(A) In general.—If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term "foreign earned income" shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term "housing expenses" shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) Regulations.—For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception.—Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).[297]

(9)[298] Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election.—

---

[297] P.L. 99-514, §1233(b), added this paragraph (8).

[298] P.L. 99-514, §1233(b), redesignated the former paragraph (8) as paragraph (9).

(1) In general.—An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) Revocation.—A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Cross References.—

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

* * * * * * *

SEC. 931. INCOME FROM SOURCES WITHIN GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.[299]

(a) General Rule.—In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, Etc. Allocable to Excluded Amounts Not Allowable.—An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified Possession.—For purposes of this section, the term "specified possession" means Guam, American Samoa, and the Northern Mariana Islands.

(d) Special Rules.—For purposes of this section—

(1) Employees of the united states.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(2) Determination of source, etc.—The determination as to whether income is described in paragraph (1) or (2) of subsection (a) shall be made under regulations prescribed by the Secretary.

(3) Determination of residency.—For purposes of this section and section 876, the determination of whether an individual is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands shall be made under regulations prescribed by the Secretary.

SEC. 932. COORDINATION OF UNITED STATES AND VIRGIN ISLANDS INCOME TAXES.[300]

(a) Treatment of United States Residents.—

(1) Application of subsection.—This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands at the close of the taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement.—Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

(3) Extent of income tax liability.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) Portion of United States Tax Liability Payable to the Virgin Islands.—

---

[299] P.L. 99-514, §1272(a), amended §931 in its entirety.

[300] P.L. 99-514, §1272(d)(1), repealed §932.
P.L. 99-514, §1274(a), added this §932.

(1) IN GENERAL.—Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) APPLICABLE PERCENTAGE.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "applicable percentage" means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) VIRGIN ISLANDS ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term "Virgin Islands adjusted gross income" means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) AMOUNTS PAID ALLOWED AS CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) TREATMENT OF VIRGIN ISLANDS RESIDENTS.—

(1) APPLICATION OF SUBSECTION.—This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands at the close of the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) FILING REQUIREMENT.—Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with the Virgin Islands.

(3) EXTENT OF INCOME TAX LIABILITY.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

(4) RESIDENTS OF THE VIRGIN ISLANDS.—In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return.

(d) SPECIAL RULE FOR JOINT RETURNS.—In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) SECTION NOT TO APPLY TO TAX IMPOSED IN VIRGIN ISLANDS.—This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands.

SEC. 933. INCOME FROM SOURCES WITHIN PUERTO RICO.

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year. In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit,[301] properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico. In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit,[302] properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

---

[301] P.L. 99-514, §1272(d)(3), inserted ", or any credit,".

[302] See footnote 301.

* * * * * * *

[SEC. 1202. Repealed.[303]]

* * * * * * *

SEC. 1221. CAPITAL ASSET DEFINED.

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A).

* * * * * * *

SEC. 1231. PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.

(a) GENERAL RULE.—

(1) GAINS EXCEED LOSSES.—If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) GAINS DO NOT EXCEED LOSSES.—If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) SECTION 1231 GAINS AND LOSSES.—For purposes of this subsection—

(A) SECTION 1231 GAIN.—The term "section 1231 gain" means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 6 months[304] and is held in connection with a trade or business or a transaction entered into for profit.

(B) SECTION 1231 LOSS.—The term "section 1231 loss" means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) SPECIAL RULES.—For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

---

[303] P.L. 99-514, §301(a), repealed §1202.

[304] P.L. 98-369, §1001(b)(15), struck out "1 year" and substituted "6 months".

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 6 months[305] and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 6 months[306] and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.[307]

(b) Definition of Property Used in the Trade or Business.—For purposes of this section—

(1) General rule.—The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months[308], and real property used in the trade or business, held for more than 6 months[309], which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221, or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221.

(2) Timber, coal, or domestic iron ore.—Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) Livestock.—Such term includes—

(A) cattle and horses regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) Unharvested crop.—In the case of an unharvested crop on land used in the trade or business and held for more than 6 months[310], if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(c) Recapture of Net Ordinary Losses.—

(1) In general.—The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) Non-recaptured net section 1231 losses.—For purposes of this subsection, the term "non-recaptured net section 1231 losses" means the excess of—

---

[305] See footnote 304.
[306] See footnote 304.
[307] P.L. 98-369, §711(c)(2)(A)(iii), amended subsection (a) in its entirety.
[308] See footnote 304.
[309] See footnote 304.
[310] See footnote 304.

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) NET SECTION 1231 GAIN.—For purposes of this subsection, the term "net section 1231 gain" means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

(4) NET SECTION 1231 LOSS.—For purposes of this subsection, the term "net section 1231 loss" means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

(5) SPECIAL RULES.—For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.[311]

* * * * * * *

SEC. 1256. SECTION 1256[312] CONTRACTS MARKED TO MARKET.

(a) GENERAL RULE.—For purposes of this subtitle—

(1) each section 1256[313] contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256[314] contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256[315] contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) SECTION 1256 CONTRACT DEFINED.—For purposes of this section, the term "section 1256 contract" means—

(1) any regulated futures contract,

(2) any foreign currency contract,

(3) any nonequity option, and

(4) any dealer equity option.[316]

(c) TERMINATIONS, ETC.—

(1) IN GENERAL.—The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256[317] contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse,[318] or otherwise.

(2) SPECIAL RULE WHERE TAXPAYER TAKES DELIVERY ON OR EXERCISES[319] PART OF STRADDLE.—If—

(A) 2 or more section 1256[320] contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises[321] any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) FAIR MARKET VALUE TAKEN INTO ACCOUNT.—For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) ELECTIONS WITH RESPECT TO MIXED STRADDLES.—

---

[311] P.L. 98-369, §176(a), added subsection (c).
[312] P.L. 98-369, §102(e)(5), struck out "REGULATED FUTURES" and substituted "SECTION 1256".
[313] P.L. 98-369, §102(a)(1)(A), struck out "regulated futures" and substituted "section 1256".
[314] See footnote 313.
[315] P.L. 98-369, §102(a)(1)(B), struck out "regulated futures" and substituted "section 1256".
[316] P.L. 98-369, §102(a)(2), amended subsection (b) in its entirety.
[317] See footnote 313.
[318] P.L. 98-369, §102(e)(1)(A), inserted "by exercise or being exercised, by assignment or being assigned, by lapse,".
[319] P.L. 98-369, §102(e)(1)(C), inserted "OR EXERCISES".
[320] See footnote 315.
[321] P.L. 98-369, §102(e)(1)(B), inserted "or exercises".

(1) ELECTION.—The taxpayer may elect to have this section not to apply to all section 1256[322] contracts which are part of a mixed straddle.

(2) TIME AND MANNER.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) MIXED STRADDLE.—For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256[323] contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256[324] contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations)[325], as being part of such straddle.

(e) MARK TO MARKET NOT TO APPLY TO HEDGING TRANSACTIONS.—

(1) SECTION NOT TO APPLY.—Subsection (a) shall not apply in the case of a hedging transaction.

(2) DEFINITION OF HEDGING TRANSACTION.—For purposes of this subsection, the term "hedging transaction" means any transaction if—

(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

(B) the gain or loss on such transactions is treated as ordinary income or loss, and

(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations)[326], the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) SPECIAL RULE FOR SYNDICATES.—

(A) IN GENERAL.—Notwithstanding paragraph (2), the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.

(B) SYNDICATE DEFINED.—For purposes of subparagraph (A), the term "syndicate" means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) HOLDINGS ATTRIBUTABLE TO ACTIVE MANAGEMENT.—

For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax-avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

---

[322] See footnote 315.
[323] See footnote 315.
[324] See footnote 313.
[325] P.L. 98-369, §107(c), inserted "(or such earlier time as the Secretary may prescribe by regulations)".
[326] P.L. 98-369, §107(d), inserted "(or such earlier time as the Secretary may prescribe by regulations)".

(4)[327] LIMITATION ON LOSSES FROM HEDGING TRANSACTIONS.—

(A) IN GENERAL.—

(i) LIMITATION.—Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) CARRYOVER OF DISALLOWED LOSS.—Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) EXCEPTION WHERE ECONOMIC LOSS.—Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) HEDGING LOSS.—The term "hedging loss" means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) UNRECOGNIZED GAIN.—The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).[328]

(f) SPECIAL RULES.—

(1) DENIAL OF CAPITAL GAINS TREATMENT FOR PROPERTY IDENTIFIED AS PART OF A HEDGING TRANSACTION.—For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2)(C) by the taxpayer as being part of a hedging transaction.

(2) SUBSECTION (a)(3) NOT TO APPLY TO ORDINARY INCOME PROPERTY.—Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) CAPITAL GAIN TREATMENT FOR TRADERS IN SECTION 1256 CONTRACTS.—

(A) IN GENERAL.—For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) TREATMENT OF UNDERLYING PROPERTY.—For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.[329]

(4) SPECIAL RULE FOR DEALER EQUITY OPTIONS OF LIMITED PARTNERS OR LIMITED ENTREPRENEURS.—In the case of any gain or loss with respect to dealer equity options which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.[330]

(g) DEFINITIONS.—For purposes of this section—

(1) REGULATED FUTURES CONTRACTS DEFINED.—The term "regulated futures contract" means a contract—

---

[327] P.L. 99-514, §1261(c), struck out paragraph (4) and redesignated paragraph (5) as paragraph (4).

[328] P.L. 98-369, §104(a), added paragraph (5).

[329] P.L. 98-369, §102(b), added paragraph (3).

[330] P.L. 98-369, §102(b), added paragraph (4).

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) FOREIGN CURRENCY CONTRACT DEFINED.—

(A) FOREIGN CURRENCY CONTRACT.—The term "foreign currency contract" means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) NONEQUITY OPTION.—The term "nonequity option" means any listed option which is not an equity option.

(4) DEALER EQUITY OPTION.—The term "dealer equity option" means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) LISTED OPTION.—The term "listed option" means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) EQUITY OPTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "equity option" means any option—

(i) to buy or sell stock, or

(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term "equity option" does not include any option with respect to any group of stocks or stock index if—

(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

(ii) the Secretary determines that such option meets the requirements of law for such a designation.

(7) QUALIFIED BOARD OR EXCHANGE.—The term "qualified board or exchange" means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) OPTIONS DEALER.—

(A) IN GENERAL.—The term "options dealer" means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) PERSONS TRADING IN OTHER MARKETS.—In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term "options dealer" also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.[331]

* * * * * * *

---

[331] P.L. 98-369, §102(a)(3), amended subsection (g) in its entirety.

SUBTITLE F—PROCEDURE AND ADMINISTRATION

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

* * * * * * *

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) General Rule.—When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification Of Taxpayer.—The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, Etc., Of Discs And Former Discs And Fsc's And Former Fsc's[332].—

(1) Records and information.—A DISC or former DISC or a FSC or former FSC[333] shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns.—A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority To Require Information Concerning Section 912 Allowances.—The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations Requiring Returns On Magnetic Tape, Etc.—

(1) In general.—The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. In prescribing such regulations, the Secretary shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with such a filing requirement.

(2) Certain returns must be filed on magnetic media.—

(A) In general.—In the case of any person who is required to file returns under sections 6042(a), 6044(a), and 6049(a) with respect to more than 50 payees for any calendar year, all returns under such sections shall be on magnetic media.

(B) Hardship exception.—Subparagraph (A) shall not apply to any person for any period if such person establishes to the satisfaction of the Secretary that its application to such person for such period would result in undue hardship.[334]

(f) Income, Estate, And Gift Taxes.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C[335].

---

[332] P.L. 98-369, §801(d)(12)(B), inserted "and FSC's and former FSC's".

[333] P.L. 98-369, §801(d)(12)(A), inserted "or a FSC or former FSC".

[334] P.L. 98-67, §109(a), amended subsection (e) in its entirety.

[335] P.L. 99-514, §1899A(52), struck out "sections 6012 to 6019, inclusive" and substituted "subparts B and C".

* * * * * * *

SEC. 6017. SELF-EMPLOYMENT TAX RETURNS.

Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

* * * * * * *

SEC. 6050B. RETURNS RELATING TO UNEMPLOYMENT COMPENSATION.

(a) REQUIREMENT OF REPORTING.—Every person who makes payments of unemployment compensation aggregating $10 or more to any individual during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amounts of such payments and the name and address of the individual to whom paid.

(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name and address of the person required to make such return, and

(2) the aggregate amount of payments to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.[336]

(c) DEFINITIONS.—For purposes of this section—

(1) UNEMPLOYMENT COMPENSATION.—The term "unemployment compensation" has the meaning given to such term by section 85(c).

(2) PERSON.—The term "person" means the officer or employee having control of the payment of the unemployment compensation, or the person appropriately designated for purposes of this section.

* * * * * * *

SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) the total amount of wages as defined in section 3401(a),

(4) the total amount deducted and withheld as tax under section 3402,

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101,[337]

(7) the total amount paid to the employee under section 3507 (relating to advance payment of earned income credit)[338]

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457.[339]

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements furnished to the employer pursuant to section 6053(a). The amounts required to be shown by paragraph (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111.

---

[336] P.L. 99-514, §1501(c)(7), amended subsection (b) in its entirety.

[337] P.L. 99-514, §1105(b), struck out "and".

[338] P.L. 99-514, §1105(b), struck out the period. As in original. No punctuation.

[339] P.L. 99-514, §1105(b), added paragraph (8).

(b) Special Rule As To Compensation Of Members Of Armed Forces.—In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) Additional Requirements.—The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

(d) Statements To Constitute Information Returns.—A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary shall, when required by such regulations, be filed with the Secretary.

(e) Railroad Employees.—

(1) Additional requirement.—Every person required to deduct and withhold tax under section 3201 from an employee shall include on or with the statement required to be furnished such employee under subsection (a) a notice concerning the provisions of this title with respect to the allowance of a creditor refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on wages imposed by section 3101(b).

(2) Information to be supplied to employees.—Each person required to deduct and withhold tax under section 3201 during any year from an employee who has also received wages during such year subject to the tax imposed by section 3101(b) shall, upon request of such employee, furnish to him a written statement showing—

(A) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted,

(B) the total amount deducted as tax under section 3201, and

(C) the portion of the total amount deducted as tax under section 3201 which is for financing the cost of hospital insurance under part A of title XVIII of the Social Security Act.

(f) Statements Required In Case Of Sick Pay Paid By Third Parties.—

(1) Statements required from payor.—

(A) In general.—If, during any calendar year, any person makes a payment of third-party sick pay to an employee, such person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom such payment was made showing—

(i) the name and, if there is withholding under section 3402(o), the social security number of such employee,

(ii) the total ~~amount~~ of the third-party sick pay paid to such employee during the calendar year, and

(iii) the total amount (if any) deducted and withheld from such sick pay under section 3402.

For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay (as defined in section 3402(o)(2)(C)) which does not constitute wages for purposes of[340] chapter 24 (determined without regard to section 3402(o)(1)).

(B) Special rules.—

(i) Statements are in lieu of other reporting requirements.—The reporting requirements of subparagraph (A) with respect to any payments shall, with respect to such payments, be in lieu of the requirements of subsection (a) and of section 6041.

---

[340] P.L. 98-67, §102(a), struck out "subchapter A of".

(ii) Penalties made applicable.—For purposes of sections 6674 and 7204, the statements required to be furnished by subparagraph (A) shall be treated as statements required under this section to be furnished to employees.

(2) Information required to be furnished by employer.—Every employer who receives a statement under paragraph (1)(A) with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to such employee showing—

(A) the information shown on the statement furnished under paragraph (1)(A), and

(B) if any portion of the sick pay is excludable from gross income under section 104(a)(3), the portion which is not so excludable and the portion which is so excludable.

To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement (if any) required under subsection (a).

SEC. 6052. RETURNS REGARDING PAYMENT OF WAGES IN THE FORM OF GROUP-TERM LIFE INSURANCE.

(a) Requirement Of Reporting.—Every employer who during any calendar year provides group-term life insurance on the life of an employee during part or all of such calendar year under a policy (or policies) carried directly or indirectly by such employer shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the cost of such insurance and the name and address of the employee on whose life such insurance is provided, but only to the extent that the cost of such insurance is includible in the employee's gross income under section 79(a). For purposes of this section, the extent to which the cost of group-term life insurance is includible in the employee's gross income under section 79(a) shall be determined as if the employer were the only employer paying such employee remuneration in the form of such insurance.

(b) Statements To Be Furnished to Employees With Respect To Whom Information Is Required.—Every employer required to make a return under subsection (a) shall furnish to each employee whose name is required to be set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.[341]

SEC. 6053. REPORTING OF TIPS.

(a) Reports By Employees.—Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary.

(b) Statements Furnished By Employers.—If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary.

(c) Reporting Requirements Relating To Certain Large Food Or Beverage Establishments.—

(1) Report to secretary.—In the case of a large food or beverage establishment, each employer shall report to the Secretary, at such time and manner as the Secretary may prescribe by regulation, the following information with respect to each calendar year:

(A) The gross receipts of such establishment from the provision of food and beverages (other than nonallocable receipts).

(B) The aggregate amount of charge receipts (other than nonallocable receipts).

(C) The aggregate amount of charged tips shown on such charge receipts.

(D) The sum of—

---

[341] P.L. 99-514, §1501(c)(4), amended subsection (b) in its entirety.

(i) the aggregate amount reported by employees to the employer under subsection (a), plus

(ii) the amount the employer is required to report under section 6051 with respect to service charges of less than 10 percent.

(E) With respect to each employee, the amount allocated to such employee under paragraph (3).

(2) Furnishing of statement to employees.—Each employer described in paragraph (1) shall furnish, in such manner as the Secretary may prescribe by regulations, to each employee of the large food or beverage establishment a written statement for each calendar year showing the following information:

(A) The name and address of such employer.

(B) The name of the employee.

(C) The amount allocated to the employee under paragraph (3) for all payroll periods ending within the calendar year.

Any statement under this paragraph shall be furnished to the employee during January of the calendar year following the calendar year for which such statement is made.

(3) Employee allocation of 8 percent of gross receipts.—

(A) In general.—For purposes of paragraphs (1)(E) and (2)(C), the employer of a large food or beverage establishment shall allocate (as tips for purposes of the requirements of this subsection) among employees performing services during any payroll period who customarily receive tip income an amount equal to the excess of—

(i) 8 percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) the aggregate amount reported by such employees to the employer under subsection (a) for such period.

(B) Method of allocation.—The employer shall allocate the amount under subparagraph (A)—

(i) on the basis of a good faith agreement by the employer and the employees, or

(ii) in the absence of an agreement under clause (i), in the manner determined under regulations prescribed by the Secretary.

(C) The secretary may lower the percentage required to be allocated.—Upon the petition of the employer or the majority of employees of such employer, the[342] Secretary may reduce (but not below 2[343] percent) the percentage of gross receipts required to be allocated under subparagraph (A) where he determines that the percentage of gross receipts constituting tips is less than 8 percent.

(4) Large food or beverage establishment.—For purposes of this subsection, the term "large food or beverage establishment" means any trade or business (or portion thereof)—

(A) which provides food or beverages,

(B) with respect to which the tipping of employees serving food or beverages by customers is customary, and

(C) which normally employed more than 10 employees on a typical business day during the preceding calendar year.

For purposes of subparagraph (C), rules similar to the rules of subsections (a) and (b) of section 52 shall apply under regulations prescribed by the Secretary, and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee[344].

(5) Employer not to be liable for wrong allocations.—The employer shall not be liable to any person if any amount is improperly allocated under paragraph (3)(B) if such allocation is done in accordance with the regulations prescribed under paragraph (3)(B).

(6) Nonallocable receipts defined.—For purposes of this subsection, the term "nonallocable receipts" means receipts which are allocable to—

(A) carryout sales, or

(B) services with respect to which a service charge of 10 percent or more is added.

(7) Application to new businesses.—The Secretary shall prescribe regulations for the application of this subsection to new businesses.

* * * * * * *

---

[342] P.L. 98-369, §1072(a)(1), struck out "The" and substituted "Upon the petition of the employer or the majority of employees of such employer, the".

[343] P.L. 98-369, §1072(a)(2), struck out "5" and substituted "2".

[344] P.L. 98-369, §1072(c)(1), inserted ", and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee".

SEC. 6057. ANNUAL REGISTRATION, ETC.

(a) ANNUAL REGISTRATION.—

(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary.

(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

(A) the name of the plan,

(B) the name and address of the plan administrator,

(C) the name and taxpayer identifying number of each participant in the plan—

(i) who, during such plan year, separated from the service covered by the plan,

(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

(E) such other information as the Secretary may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary, at such time as may be prescribed by regulations, of—

(1) any change in the name of the plan,

(2) any change in the name or address of the plan administrator,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary, the Secretary may receive from—

(1) any plan to which subsection (a) applies, and

(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE[345].—The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health and Human Services[346].

(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.[347]

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services[348], may prescribe such regulations as may be necessary to carry out the provisions of this section.

(2) PLANS TO WHICH MORE THAN ONE EMPLOYER CONTRIBUTES.—This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

* * * * * * *

---

[345] As in original.

[346] P.L. 98-369, §2663(j)(5)(D), struck out ", Education, and Welfare" and substituted "and Human Services".

[347] P.L. 98-397, §206, added this sentence.

[348] See footnote 346.

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D)[349] who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) Definitions.—For purposes of this section—

(1) Return.—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) Taxpayer return information.—The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

* * * * * * *

(6) Taxpayer identity.—The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

* * * * * * *

(8) Disclosure.—The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) Federal agency.—The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

* * * * * * *

(h) Disclosure to Certain Federal Officers and Employees for Purposes of Tax Administration, etc.—

* * * * * * *

(6) Withholding of tax from social security benefits.—Upon written request of the payor agency, the Secretary may disclose available return information from

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) General Rule.—Returns and return information shall be confidential, and except as authorized by this title—

---

[349] P.L. 98-369, §2651(k)(2), struck out "or of any local child support enforcement agency" and substituted ", any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D)".

the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).[350]

* * * * * * *

(l) Disclosure Of Returns And Return Information For Purposes Other Than Tax Administration.

(1) Disclosure of certain returns and return information to social security administration and railroad retirement board. The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) Disclosure of returns and return information to the department of labor and pension benefit guaranty corporation.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) Disclosure that applicant for federal loan has tax delinquent account.—

(A) In general.—Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) Restriction on disclosure.—Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

(C) Included federal loan program defined.—For purposes of this paragraph, the term "included Federal loan program" means any program—

(i) under which the United States or a Federal agency makes, guarantees, or insures loans, and

(ii) with respect to which there is in effect a determination by the Director of the Office of Management and Budget (which has been published in the Federal Register) that the application of this paragraph to such program will substantially prevent or reduce future delinquencies under such program.

(4) Disclosure of returns and return information for use in personnel or claimant representative matters.—The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code,

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) Department of health, education, and welfare[351].—Upon written request

---

[350] P.L. 98-21, §121(c)(3)(A), added paragraph (6).
[351] As in original.

by the Secretary of Health and Human Services[352], the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

(6) Disclosure of return information to federal, state, and local child support enforcement agencies.—

(A) Return information from internal revenue service.—The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number),[353] address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) Restriction On Disclosure.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) Disclosure of return information to federal, state, and local agencies administering certain programs under the social security act or the food stamp act of 1977.—

(A) Return information from social security administration.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from internal revenue service.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies.—The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

---

[352] P.L.98-369, §2663(j)(5)(E), struck out ", Education, and Welfare" and substituted "and Human Services".

[353] P.L. 98-378, §19(b)(1), inserted "social security account number (or numbers, if the individual involved has more then one such number),".

(v) unemployment compensation provided under a State law described in section 3304 of this title[354];

(vi) assistance provided under the Food Stamp Act of 1977; and

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66).[355]

(8)[356] Disclosure of certain return information by social security administration to state and local child support enforcement agencies.—

(A) In general.—Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a State or local child support enforcement agency return information from returns with respect to social security account numbers,[357] net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) Restriction on disclosure.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) State or local child support enforcement agency.—For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) Disclosure of alcohol fuel producers to administrators of state alcohol laws.—Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.[358]

(10) Disclosure of certain information to agencies requesting a reduction under section 6402(c) or 6402(d).—

(A) Return information from internal revenue service.—The Secretary may, upon receiving a written request, disclose to officers and employees of an agency seeking a reduction under section 6402(c) or 6402(d)—

(i) the fact that a reduction has been made or has not been made under such subsection with respect to any person;

(ii) the amount of such reduction; and

(iii) taxpayer identifying information of the person against whom a reduction was made or not made.

(B) Restriction on use of disclosed information.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from reduction made under section 6402(c) or section 6402(d).[359]

(11) Disclosure of certain information to agencies requesting a reduction under section 6402(c).—

(A) Return information from internal revenue service.—The Secretary shall, upon receiving a written request, disclose to officers and employees of a State agency seeking a reduction under section 6402(c)—

(i) the fact that a reduction has been made or has not been made under such subsection with respect to any taxpayer;

(ii) the amount of such reduction;

(iii) whether such taxpayer filed a joint return;

---

[354] P.L. 99-514, §1899A(53), struck out "Code" and substituted "title".

[355] P.L. 98-369, §2651(k)(1), amended paragraph (7) in its entirety.

[356] P.L. 98-369, §453(b)(6), redesignated the paragraph (7) added by P.L. 96-265 as paragraph (8). P.L. 96-611, §11(a)(2)(A), had previously made the same redesignation.

[357] P.L. 98-378, §19(b)(2), inserted "social security account numbers,".

[358] P.L. 98-369, §453(a), added paragraph (9).

[359] P.L. 98-369, §2653(b)(3)(A), added paragraph (10), applicable with respect to refunds payable under section 6402 after December 31, 1985, and before January 1, 1988.

(iv) taxpayer identity information with respect to the taxpayer against whom a reduction was made or not made and of any other person filing a joint return with such taxpayer; and

(v) the fact that a payment was made (and the amount of the payment) on the basis of a joint return in accordance with section 464(a)(3) of the Social Security Act.

(B) Restriction on use of disclosed information.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate, agency records or in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).[360]

(12) Disclosure of return information to carry out federal employees' retirement system.—

(A) In general.—The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) Restriction on disclosure.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.[361]

* * * * * * *

(p) Procedure and Recordkeeping.—

(1) Manner, time, and place of inspections.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Procedure.—

(A) Reproduction of returns.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) Disclosure of return information.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) Use of reproductions.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) Records of inspection and disclosure.—

(A) System of recordkeeping.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4) or (7)(A)(ii), (k)(1), (2), or (6), (l)(1), (4)(B), (5), (7), (8), (9)[362], (10)[363], (11)[364], or (12)[365], (m), or (n).

---

[360] P.L. 98-378, §21(f)(1), added paragraph (11), applicable with respect to refunds payable under section 6402 after December 31, 1985.

[361] P.L. 99-335, §310(a), added paragraph (12).

[362] P.L. 98-369, §453(b)(1), struck out "or (7)", and substituted "(7), (8), or (9)".

[363] P.L. 98-369, §2653(b)(3)(B)(i), struck out "or (9)" and substituted "(9), or (10)".

[364] P.L. 98-378, §21(f)(2), struck out "or (10)" and substituted "(10), or (11)".

[365] P.L. 99-335, §310(b)(1), struck out "or (11)" and substituted "(11), or (12)".

The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) REPORT BY THE SECRETARY.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) PUBLIC REPORT ON DISCLOSURES.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), and the General Accounting Office the number of—

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made,

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(6),[366] (i)(1), (2), (3), or (5), (j)(1) or (2), (l)(1), (2), (3), (5), (10)[367], (11)[368], or (12)[369], or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), or (9)[370] shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentialty of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), or (9)[371] return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner; and

(ii) in the case of an agency described in subsections (h)(2), (h)(6),[372] (i)(1), (2), (3), or (5), (j)(1) or (2), (l)(1), (2), (3), (5), (10)[373], (11)[374], or (12)[375], or

---

[366] P.L. 98-21, §121(c)(3)(B), inserted "(h)(6),".
[367] P.L. 98-369, §2653(b)(3)(B)(ii), struck out "or (5)" and substituted "(5), or (10)".
[368] P.L. 98-378, §21(f)(3), struck out "or (10)" and substituted "(10), or (11)".
[369] P.L. 99-335, §310(b)(2)(A), struck out "or (11)" and substituted "(11), or (12)".
[370] P.L. 98-369, §453(b)(2), struck out "or (7)" and substituted "(7), (8), or (9)".
[371] P.L. 98-369, §453(b)(3), struck out "(l)(6) or (7)" and substituted "(l)(6), (7), (8), or (9)".
[372] P.L. 98-21, §121(c)(3)(B), inserted "(h)(6),".
[373] P.L. 98-369, §2653(b)(3)(B)(iii), struck out "or (5)" and substituted "(5), or (10)".

(o)(1),,[376] or the General Accounting Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information,

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under subsection (m)(2) or (4) and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency).

(5) REPORT ON PROCEDURES AND SAFEGUARDS.—After the close of each calendar year[377], the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions and the General Accounting Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances, of deficiencies in, and failure to establish or utilize, such procedures.

(6) AUDIT OF PROCEDURES AND SAFEGUARDS.—

(A) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) RECORDS OF INSPECTION AND REPORTS BY THE COMPTROLLER GENERAL.—The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the General Accounting Office under subsection (i)(7)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) ADMINISTRATIVE REVIEW.—The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) STATE LAW REQUIREMENTS.—

(A) SAFEGUARDS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal

---

[374] P.L. 98-378, §21(f)(4), struck out "or (10)" and substituted "(10), or (11)".
[375] P.L. 99-335, §310(b)(2)(B), struck out "or (11)" and substituted "(11), or (12)".
[376] As in original. One comma should be stricken.
[377] P.L. 99-386, §206(b), struck out "quarter" and substituted "year".

return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) DISCLOSURE OF RETURNS OR RETURN INFORMATION IN STATE RETURNS.—Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

* * * * * * *

SEC. 6109. IDENTIFYING NUMBERS.

(a) SUPPLYING OF IDENTIFYING NUMBERS.—When required by regulations prescribed by the Secretary:

(1) INCLUSION IN RETURNS.—Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) FURNISHING NUMBER TO OTHER PERSONS.—Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) FURNISHING NUMBER OF ANOTHER PERSON.—Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(4) FURNISHING IDENTIFYING NUMBER OF INCOME TAX RETURN PREPARER.—Any return or claim for refund prepared by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. For purposes of this paragraph, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e).

For purposes of this subsection, the identifying number of an individual (or his estate) shall be such individual's social security account number.

(b) LIMITATION.—

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(c) REQUIREMENT OF INFORMATION.—For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

(d) USE OF SOCIAL SECURITY ACCOUNT NUMBER.—The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.

(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—If—

(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

(2) such dependent has attained the age of 5 years before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent.[378]

* * * * * * *

CHAPTER 63—ASSESSMENT

SEC. 6205. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) ADJUSTMENT OF TAX.—

---

[378] P.L. 99-514, §1524(a), added subsection (e).

(1) General rule.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) United states as employer.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or American Samoa as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of Columbia as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) States and political subdivisions as employer.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.[379]

(b) Underpayments.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compenation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

* * * * * * *

CHAPTER 64—COLLECTION

SEC. 6305. COLLECTION OF CERTAIN LIABILITY.

(a) In General.—Upon receiving a certification from the Secretary of Health, Education, and Welfare[380], under section 452(b) of the Social Security Act with respect to any individual, the Secretary shall assess and collect the amount certified by the Secretary of Health, Education, and Welfare[381], in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that—

(1) no interest or penalties shall be assessed or collected,

(2) for such purposes, paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply,

(3) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children, and

(4) in the case of the first assessment against an individual for delinquency under a court or administrative order against such individual for a particular person or persons, the collection shall be stayed for a period of 60 days immediately following notice and demand as described in section 6303.

(b) Review Of Assessments And Collections.—No court of the United States, whether established under article I or article III of the Constitution, shall have jurisdiction of any action, whether legal or equitable, brought to restrain or review the assessment and collection of amounts by the Secretary under subsection (a), nor shall any such assessment and collection be subject to review by the Secretary in any proceeding. This subsection does not preclude any legal, equitable, or administrative action against the State by an individual in any State court or before any State agency to determine his liability for any amount assessed against him and collected, or to recover any such amount collected from him, under this section.

---

[379] P.L. 99-272, §13205(a)(2)(D), added paragraph (5).

[380] As in original.

[381] As in original.

* * * * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) Authority Of Secretary.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

* * * * * * *

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) Enumeration.—There shall be exempt from levy—

(1) Wearing apparel and school books.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $1,500 in value;

(3) Books and tools of a trade, business, or profession.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $1,000 in value;

(4) Unemployment benefits.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico;

(5) Undelivered mail.—Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Judgments for support of minor children.—If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income.—Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

(10) Certain service-connected disability payments.—Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

(A) subchapter II, IV, or VI of chapter 11 of such title 38,
(B) subchapter I, II, or III of chapter 19 of such title 38, or
(C) chapter 21, 31, 32, 34, 35, 37, or 39 of such title 38.[382]

* * * * * * *

---

[382] P.L. 99-514, §1565(a), added paragraph (10).

(c) No Other Property Exempt.—Notwithstanding any other law of the United States (including section 207 of the Social Security Act)[383], no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

* * * * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

* * * * * * *

SEC. 6402. AUTHORITY TO MAKE CREDITS OR REFUNDS.

(a) General Rule.—In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c) and (d)[384], refund any balance to such person.

(b) Credits Against Estimated Tax.—The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) Offset Of Past-due Support Against Overpayments.—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support[385] and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made.[386] This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(d) Collection Of Debts Owed To Federal Agencies.—

(1) In general.—Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than any OASDI overpayment and past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

(2) Priorities for offset.—Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) Definitions.—For purposes of this subsection the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.[387]

(e) Review Of Reductions.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency to which the amount of such reduction was paid.[388]

---

[383] P.L. 98-369, §2661(o)(5), inserted "(including section 207 of the Social Security Act)".

[384] P.L. 98-369, §2653(b)(2), struck out "subsection (c)" and substituted "subsections (c) and (d)", applicable to refunds payable after December 31, 1985, and before January 1, 1988.

[385] P.L. 98-378, §21(e)(1)(A), struck out "to which support has been assigned" and substituted "collecting such support".

[386] P.L. 98-378, §21(e)(1)(B), added this sentence.

[387] P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 1, 1988.

(f) FEDERAL AGENCY.—For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).[389]

(g) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment.[390]

(h)[391] CROSS REFERENCE.—For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.[392]

* * * * * * *

SEC. 6413. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.[393]

(a) ADJUSTMENT OF TAX.—

(1) GENERAL RULE.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration,[394] proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) UNITED STATES AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) GUAM OR AMERICAN SAMOA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) DISTRICT OF COLUMBIA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.[395]

(b) OVERPAYMENTS OF CERTAIN EMPLOYMENT TAXES[396].—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration[397] and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

---

[388] See footnote 387.

[389] See footnote 387.

[390] See footnote 387.

[391] P.L. 98-378, §21(e)(2), redesignated the former subsection (g) as subsection (h).

[392] See footnote 387.

[393] P.L. 97-248, §307(a)(12), amended the heading for §6413 to read "SPECIAL RULES APPLICABLE TO CERTAIN TAXES UNDER SUBTITLE C."

P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(a)(12).

[394] P.L. 97-248, §307(a)(10), struck out "or 3402 is paid with respect to any payment of remuneration," and substituted "3402 or 3451 is paid with respect to any payment of remuneration, interest, dividends, or other amounts,".

P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(a)(10).

[395] P.L. 99-272, §13205(a)(2)(E)(i), added paragraph (5).

[396] P.L. 97-248, §307(a)(11)(A), struck out "OF CERTAIN EMPLOYMENT TAXES".

P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(a)(11)(A).

[397] P.L. 97-248, §307(a)(11)(B), struck out "or 3402 is paid or deducted with respect to any payment of remuneration" and substituted "3402 or 3451 is paid or deducted with respect to any payment of remuneration, interest, dividends, or other amount".

P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(a)(11)(B).

(c) Special Refunds.—

(1) In general.—If by reason of an employee receiving wages from more than one employer during a calendar year the wages received by him during such year exceed the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective with respect to such year, the employee shall be entitled (subject to the provisions of section 31(b)[398]) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 or section 3201, or by both such sections, and deducted from the employee's wages (whether or not paid to the Secretary), which exceeds the tax with respect to the amount of such wages received in such year which is equal to such contribution and benefit base. The term "wages" as used in this paragraph shall, for purposes of this paragraph, include "compensation" as defined in section 3231(e).

(2) Applicability in case of federal and state employees, employees of certain foreign affiliates[399], and governmental employees in Guam, American Samoa, and the District of Columbia—

(A) Federal employees.—In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year with respect to which such contribution and benefit base is effective, determined by each such head or agent as constituting wages paid to an employee.

(B) State employees.—For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) Employees of certain foreign affiliates[400].—For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121*(l)* as would be wages if such services constituted employment; the term "employer" includes any American employer[401] which has entered into an agreement pursuant to section 3121*(l)*; the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121*(l)*, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121*(l)* has been paid to the Secretary.

(D) Governmental employees in Guam.—In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(b)[402] shall, for purposes of this subsection, be deemed a separate employer.

---

[398] P.L. 97-248, §302(c), struck out "31(b)" and substituted "31(c)".
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §302(c).

[399] P.L. 98-21, §321(e)(4)(B), struck out "CORPORATIONS" and substituted "AFFILIATES".

[400] P.L. 98-21, §321(e)(4)(A)(i), struck out "CORPORATIONS" and substituted "AFFILIATES".

[401] P.L. 98-21, §321(e)(4)(A)(ii), struck out "domestic corporation" and substituted "American employer".

[402] P.L. 99-272, §13205(a)(2)(E)(ii)(I), struck out "3125(a)" and substituted "3125(b)".

(E) GOVERNMENTAL EMPLOYEES IN AMERICAN SAMOA.—In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(c)[403] shall, for purposes of this subsection, be deemed a separate employer.

(F) GOVERNMENTAL EMPLOYEES IN THE DISTRICT OF COLUMBIA.—In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125(d)[404] shall, for purposes of this subsection, be deemed a separate employer.

(G) EMPLOYEES OF STATES AND POLITICAL SUBDIVISIONS.—In the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.[405]

(3) APPLICABILITY WITH RESPECT TO COMPENSATION OF EMPLOYEES SUBJECT TO THE RAILROAD RETIREMENT TAX ACT.—In the case of any individual who, during any calendar year, receives wages from one or more employers and also receives compensation which is subject to the tax imposed by section 3201 or 3211, such compensation shall, solely for purposes of applying paragraph (1) with respect to the tax imposed by section 3101(b), be treated as wages received from an employer with respect to which the tax imposed by section 3101(b) was deducted.

(d) REFUND OR CREDIT OF FEDERAL UNEMPLOYMENT TAX.—Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

* * * * * * *

CHAPTER 66—LIMITATIONS

* * * * * * *

SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) PERIOD OF LIMITATION ON FILING CLAIM.—Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) LIMITATION ON ALLOWANCE OF CREDITS AND REFUNDS.—

(1) FILING OF CLAIM WITHIN PRESCRIBED PERIOD.—No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—

(A) Limit where claim filed within 3-year period.—If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period.—If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

---

[403] P.L. 99-272, §13205(a)(2)(E)(ii)(I), struck out "3125(b)" and substituted "3125(c)".
[404] P.L. 99-272, §13205(a)(2)(E)(ii)(I), struck out "3125(c)" and substituted "3125(d)".
[405] P.L. 99-272, §13205(a)(2)(E)(ii)(II), added subparagraph (G).

(C) LIMIT IF NO CLAIM FILED.—If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) SPECIAL RULES APPLICABLE IN CASE OF EXTENSION OF TIME BY AGREEMENT.—If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) TIME FOR FILING CLAIM.—The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

(2) LIMIT ON AMOUNT.—If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed

(3) CLAIMS NOT SUBJECT TO SPECIAL RULE.—This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) SPECIAL RULES APPLICABLE TO INCOME TAXES.—

(1) SEVEN-YEAR PERIOD OF LIMITATION WITH RESPECT TO BAD DEBTS AND WORTHLESS SECURITIES.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS OR CAPITAL LOSS CARRYBACKS.—

(A) Period of limitation.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect to such taxable year, whichever expires later; except that with respect to an overpayment attributable to the creation of, or an increase in a net operating loss carryback as a result of the elimination of excesssive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABLE RULES.—

(i) IN GENERAL.—If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph.

(ii) TENTATIVE CARRYBACK ADJUSTMENTS.—If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a).

(iii) DETERMINATIONS BY COURTS TO BE CONCLUSIVE.—In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to—

(I) the net operating loss deduction and the effect of such deduction, and

(II) the determination of a short-term capital loss and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.[406]

(3) SPECIAL RULES RELATING TO FOREIGN TAX CREDIT.—

(A) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO FOREIGN TAXES PAID OR ACCRUED.—If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) EXCEPTION IN THE CASE OF FOREIGN TAXES PAID OR ACCRUED.—In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO CERTAIN CREDIT CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

---

[406] P.L. 99-514, §141(b)(3), amended subparagraph (B) in its entirety.

(C) Credit carryback defined.—For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39.[407]

(5) Special period of limitation with respect to self-employment tax in certain cases.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the law day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health and Human Services[408].

(6)[409] Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

(e) Special Rules in Case of Manufactured Sugar.—

(1) Use as livestock feed or for distillation or production of alcohol.—No payment shall be allowed under section 6418(a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) Exportation.—No payment shall be allowed under section 6418(b) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(f) Special Rule for Chapter 42 and Certain Chapter 43 Taxes.—For purposes of any tax imposed by chapter 42 or section 4975, the return referred to in subsection (a) shall be the return specified in section 6501(l)(1)[410].

(g) Special Rule for Claims With Respect to Partnership Items.—In the case of any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (as defined in section 6231(a)(3)), the provisions of section 6227 and subsections (c) and (d) of section 6230 shall apply in lieu of the provisions of this subchapter.

(h) Special Rules for Windfall Profit Taxes.—

(1) Oil subject to withholding.—In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in subsection (a) shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year (as defined in section 6501(m)(1)(B)[411]) ends.

(2) Special rule for DOE reclassification.—In the case of any tax imposed by chapter 45, if a Department of Energy change (as defined in section 6501(m)(2)(B)[412]) becomes final, the period for filing a claim for credit or refund for any overpayment attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

(3) Cross reference.—

For period of limitation for windfall profit tax items of partnerships, see section 6227(a) and subsections (c) and (d) of section 6230 as made applicable by section 6232.[413]

(i)[414] Cross References.—

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

---

[407] P.L. 98-369, §474(r)(40), amended subparagraph (C) in its entirety.

P.L. 99-514, §231(d)(3)(I), struck out "and any research credit carryback under section 30(g)(2)", in §6511(d)(6)(C). Executed as if §231(d)(3)(I) read "6511(d)(4)(C)".

[408] P.L. 98-369, §2663(j)(5)(F), struck out ", Education, and Welfare" and substituted "and Human Services".

[409] P.L. 98-369, §211(b)(5), struck out paragraph (6) and redesignated paragraph (7) as paragraph (6).

[410] P.L. 98-369, §163(b)(2), struck out "6501(n)(1)" and substituted "6501(l)(1)".

[411] P.L. 99-514, §1847(b)(15)(A), struck out "(q)(1)(B)" and substituted "(m)(1)(B)".

[412] P.L. 99-514, §1847(b)(15)(B), struck out "(q)(2)(B)" and substituted "(m)(2)(B)".

[413] P.L. 98-369, §714(p)(2)(G), amended paragraph (3) in its entirety.

[414] P.L. 98-369, §735(c)(14), struck out subsection (i) and redesignated subsection (j) as subsection (i).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(c).

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

* * * * * * *

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

* * * * * * *

SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.[415]

* * * * * * *

(d) Amount Of Required Installments.—For purposes of this section—

* * * * * * *

(2) Lower required installment where annualized income installment is less than amount determined under paragraph (1).—

* * * * * * *

(C) Special rules.—For purposes of this paragraph—

* * * * * * *

(iii) Adjusted self-employment income.—The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

* * * * * * *

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

* * * * * * *

SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) Returns And Return Information.—

(1) Federal employees and other persons.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i),,[416] (l)(6), (7), (8), (9), (10), or (11) or (m)(2) or (4) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

---

[415] P.L. 98-369, §411, amended §6654 in its entirety.

[416] As in original. One comma should be stricken.

P.L. 98-369, §453(b)(4), struck out "or (8)" and substituted "(8), or (9)", applicable to refunds payable after December 31, 1985, and before January 1, 1988.

P.L. 98-369, §2653(b)(4), struck out "or (9)" and substituted "(9), or (10)", applicable to refunds payable after December 31, 1985, and before January 1, 1988.

P.L. 98-378, §21(f)(5), struck out "or (10)" and substituted "(10), or (11)".

(3) Other persons.—It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation.—It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders.—It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer.—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction there, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosure by certain delegates of secretary.—All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) Cross reference.—

(1) Penalties for disclosure of information by preparkers of returns..—For penalty for dislosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information.—For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

* * * * * * *

CHAPTER 80—GENERAL RULES

* * * * * * *

SEC. 7852. OTHER APPLICABLE RULES.

* * * * * * *

(b) Reference In Other Laws To Internal Revenue Code Of 1939.—Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

* * * * * * *

[*Internal References.*—There are citations to the Internal Revenue Code of 1939 in Social Security Act §201(a)(1), (a)(2), (a)(3), (a)(4), (g)(1)(A)(i), (g)(1)(A)(end), (g)(2); §205(c)(5)(F)(i); §208(a); §209(e)(1) and (e)(2); §§1106(a) and 1107(a). There are citations to the IRC of 1954 in SS Act §201(a)(3), (a)(4), (b)(1)(A), (b)(2)(A), (g)(1)(A)(i), (g)(1)(A)(ii), (g)(1)(A)(end), (g)(1)(B), (g)(2), (g)(4); §202(v); §203(f)(5)(B)(ii) and (k); §205(c)(1)(D)(i) and (c)(5)(F)(i); §205(p)(1); §208(a), (a)(1) and (a)(2); §209(e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(8), (f)(1), (k), (p)(1), (p)(2), (q), (r), (s) and 209(end)(1); §210(a)(B)(ii), (a)(8)(A), (a)(8)(B), (a)(9), (a)(10)(B), (p)(4), and (q); §211(a), (a)(3)(A), (a)(3)(B), (a)(4), (a)(6), (a)(7), (a)(8), (a)(10), (a)(11), (a)(11)(B), (a)(12), (a)(end)(iii), (a)(end)(iv), (c), (c)(3), (c)(6), (c)(end), (d), (e), (h)(1)(A), (h)(1)(B), (h)(2)(A), (B), and (C); §215(a)(7)(E)(ii); §216(j); §218(e)(3) and (v)(3); §229(b);

§230(c); §232; §402(d)(1) and (d)(2); §452(b), (c)(1), and (c)(2); §462(g)(3); §464(a)(2)(B); §706(d) and (d)(2); §709(a); §710(a) and (b); §1101(a)(end); §1107(a); §1131(a)(2)(A) and (a)(2)(end); §1137(a)(2), (a)(4)(B), (a)(5)(A) and (B), (b)(3) and (c)(1); §1202(b)(5) and (b)(8)(B)(i); §1611(d); §1612(a)(1)(C); §1631(b)(3) and (e)(1)(B); §1817(a)(1) and (2), and (f)(1); §1862(b)(2)(A)(i) and (b)(3)(A)(iv); §1886(b)(6); §2002(a)(2)(B)(iii). There is a citation to the Internal Revenue Code of 1986 in §209(e)(9). There are citations to the Federal Unemployment Tax Act [§§3301-3311 of the IRC of 1954] in SSAct §302(a); §303(a), (a)(4) and (a)(5); §901(b)(1), (b)(3), (c)(1)(B)(ii), (c)(2)(B), (c)(3)(A), (c)(3)(C) and (d)(1)(A)(ii); §903(b)(1)(B) and (b)(1)(end); §904(g); and §905(b)(1). The following SSAct sections have footnotes referring to the IRC of 1954: §205(c)(2)(C)(i) and the catchlines to §§207 and 232; title IV, Part D (at §451); §454(8)(B); §1106 (catchline) and (a); and the catchlines to §§1131 and 1201.]

P.L. 84-885, Approved August 1, 1956 (70 Stat. 890)
[State Department Basic Authorities Act of 1956]

* * * * * * *

SEC. 33. [22 U.S.C. 2705] The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

(2) The report, designated as a "Report of Birth Abroad of a Citizen of the United States", issued by a consular officer to document a citizen born abroad.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security §205 has a footnote referring to P.L. 84-885.]

P.L. 86-372, Approved September 23, 1959 (73 Stat. 654)
Housing Act of 1959

* * * * * * *

SEC. 202. [12 U.S.C. 1701q] (a)(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or handicapped families.

(2) In order to carry out the purpose of this section, the Secretary may make loans to any corporation (as defined in subsection (d)(2)), to any limited profit sponsor approved by the Secretary, to any consumer cooperative, or to any public body or agency for the provision of rental or cooperative housing and related facilities for elderly or handicapped families, except that (A) no such loan shall be made unless the applicant shows that it is unable to secure the necessary funds from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this section, (B) no such loan shall be made unless the Secretary finds that the construction will be undertaken in an economical manner and that it will not be of elaborate or extravagant design or materials, and (C) no such loan shall be made to a public body or agency unless it certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937[1].

(3) A loan under this section may be in an amount not exceeding the total development cost (as defined in subsection (d)(3)), as determined by the Secretary, except that in the case of other than a corporation, consumer cooperative, or public body or agency the amount of the loan shall not exceed 90 per centum of the development cost; shall be secured in such manner and be repaid within such period, not exceeding fifty years, as may be determined by him; and shall bear interest at a rate which is not more than a rate determined by the Secretary of the Treasury taking

---

[1] P.L. 75-412 (50 Stat. 888), approved September 1, 1937.

into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made, adjusted to the nearest one-eighth of 1 per centum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program, except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum[2].

(4)(A) There is authorized to be appropriated for the purposes of this section not to exceed $500,000,000 which amount shall be increased by $150,000,000 on July 1, 1969. Amounts so appropriated, and the proceeds from notes or other obligations issued under subparagraph (B), shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(B)(i) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed $1,475,000,000, which amount shall be increased to $2,387,500,000 on October 1, 1977, to $3,300,000,000 on October 1, 1978, to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980,[3] to $5,752,500,000 on October 1, 1981, to $6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1984[4], [5], in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act[6]; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Secretary may not issue notes or other obligations to the Secretary of the Treasury pursuant to this section in an aggregate amount exceeding $800,000,000 except as approved in appropriation Acts.

(ii) The receipts and disbursements of the fund shall not be included in the total of the Budget of the United States Government and shall be exempt from any limitation on annual expenditure or net lending.

(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subparagraph (B). The aggregate loans made under this section shall not exceed the limits on such lending authority established in appropriation Acts, and not more than $666,400,000[7] may be approved in appropriation Acts for such loans with respect to fiscal year 1984[8].

(5) To the maximum extent practicable, the Secretary shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this section.

* * * * * * *

(b) In the performance of, and with respect to, the functions, powers, and duties vested in him by this section the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402 (except subsection (c)(2)) of the Housing Act of 1950[9].

(c)(1) Housing constructed with a loan made under this section shall not be used for transient or hotel purposes while such loan is outstanding.

(2) As used in paragraph (1), the term "transient or hotel purposes" shall have such meaning as may be prescribed by the Secretary, but rental for any period less than thirty days shall in any event constitute use for such purposes. The provisions of subsections (f) through (j) of section 513 of the National Housing Act[10] (as added by

---

[2] P.L. 98-181, §223(a)(1), inserted ", except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum".

[3] P.L. 98-181, §223(b)(1), struck out "and".

[4] P.L. 98-479, §102(c)(1), struck out "1985" and substituted "1984".

[5] P.L. 98-181, §223(b)(2), inserted ", to $6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1985,". As in original. One comma should be stricken.

[6] P.L. 97-258, §4(b), deemed this reference to be "chapter 31 of title 31".

[7] P.L. 98-181, §223(c), struck out "$850,848,000" and substituted "$666,400,000".

[8] P.L. 98-181, §223(c), struck out "1982" and substituted "1984".

[9] P.L. 81-475.

[10] P.L. 73-479.

section 132 of the Housing Act of 1954[11]) shall apply in the case of violations of paragraph (1) as though the housing described in such subsection were multifamily housing (as defined in section 513(e)(2) of the National Housing Act) with respect to which a mortgage is insured under such Act.

(3) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931[12], as amended (the Davis-Bacon Act[13]); but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

(d) As used in this section—

(1) The term "housing" means structures suitable for dwelling use by elderly or handicapped families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

(2) The term "corporation" means any incorporated private institution or foundation—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such project is located, and (ii) which is responsible for the operation of the housing project assisted under this section; and

(C) which is approved by the Secretary as to financial responsibility.

(3) The term "development cost" means costs of construction of housing and of other related facilities, the cost of movables necessary to the basic operation of the project as determined by the Secretary, and of the land on which it is located, including necessary site improvement, which cost shall be determined without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 231 of the National Housing Act[14]. In the case of housing to meet the needs of handicapped (primarily nonelderly) persons, such term also means the cost of acquiring existing housing and related facilities, the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation, thereof, and the cost of the land on which the housing and related facilities are located.

(4) The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950[15]. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this section. Notwithstanding the preceding provisions of this paragraph, the term "elderly or handicapped families" includes two or more elderly or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be essential to their care or well-being, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the family at the time of his or her death.

---

[11] P.L. 83-560.

[12] P.L. 71-798.

[13] P.L. 74-403.

[14] P.L. 73-479, (Vol. II, p. 224).

[15] Reference should probably be to "§102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970" - P.L. 91-517.

(5) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(6) The term "Secretary" means the Secretary of Housing and Urban Development.

(7) The term "construction" means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures.

(8) The term "related facilities" means (A) new structures suitable for use by elderly or handicapped families residing in the project or in the area as cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities, and (B) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for such uses.

(e) Nothing in this section or in regulations promulgated under this section shall prevent a corporation or consumer cooperative from obtaining a loan under this section for the provision of housing and related facilities for elderly or handicapped families, notwithstanding the fact that such corporation or cooperative has theretofore obtained a commitment from the Federal Housing Administration for mortgage insurance under section 231 of the National Housing Act with respect to the housing involved, if (1) such corporation or cooperative is otherwise eligible for such loan under this section, (2) such commitment was obtained prior to the date of enactment of the Housing Act of 1961[16], and (3) the Secretary determines that the financing of such housing through a loan under this section rather than through mortgage insurance under such section 231 is necessary or desirable in order to avoid hardship for the elderly or handicapped families who are the prospective tenants of such housing.

(f) In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health (including adult day health services), continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health and Human Services[17] pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963[18] or pursuant to title III of the Older Americans Act of 1965[19].

(g) In carrying out the provisions of this section and section 8 of the United States Housing Act of 1937[20], the Secretary shall issue and implement regulations, as soon as practicable after the date of enactment of Housing and Community Development Act of 1977[21], which shall provide that the processing of any application for a loan for a project under this section and the processing of any application for assistance under such section 8 with respect to housing units in the same such project shall be coordinated in an economical and efficient manner. At the time of settlement on permanent financing with respect to a project under this section, the Secretary shall make an appropriate adjustment in the amount of any assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 in order to reflect fully any difference between the interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

(h) Of the amounts made available in appropriation Acts for loans pursuant to subsection (a)(4)(C) for the fiscal year commencing on October 1, 1983[22], not less than $50,000,000 shall be available for loans for the development of rental housing and related facilities specifically designed to meet the needs of handicapped (primarily nonelderly) persons, and persons described in subparagraphs (B) and (C) of subsection (d)(4) who have been released from residential health treatment facilities[23]. The Secretary shall take such steps as may be necessary to assure that—

---

[16] June 30, 1961 (P.L. 87-70, 75 Stat. 149).

[17] P.L. 98-479, §201(e), struck out ", Education, and Welfare" and substituted "and Human Services".

[18] P.L. 88-164.

[19] P.L. 89-73.

[20] P.L. 75-412.

[21] October 12, 1977 (P.L. 95-128, 91 Stat. 1111).

[22] P.L. 98-181, §223(d)(1), struck out "1978" and substituted "1983".

[23] P.L. 98-181, §223(d)(2), inserted ", and persons described in subparagraphs (B) and (C) of subsection (d)(4) who have been released from residential health treatment facilities".

(1) funds made available pursuant to this subsection will be used to support innovative methods of meeting the needs of persons described in the first sentence of this subsection[24] by providing a variety of housing options, ranging from small group homes to independent living complexes; and[25]

(2) housing and related facilities assisted under this subsection will provide persons described in the first sentence of this subsection who are[26] occupying units within such housing with an assured range of services specified under subsection (f) and the opportunity for optimal independent living and participation in normal daily activities, and will facilitate access by such persons to the community at large and to suitable employment opportunities within such community.[27]

(i)(1) Unless otherwise requested by the sponsor, a maximum of 25 per centum of the units in a project financed under this section may be efficiency units, subject to a determination by the Secretary that such units are appropriate for the elderly or handicapped population residing in the vicinity of such project or to be served by such project.

(2) The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor.

(3) In establishing per unit cost limitations for purposes of this section, the Secretary shall take into account design features necessary to meet the needs of elderly and handicapped residents, and such limitations shall reflect the cost of providing such features. The Secretary shall adjust the per unit cost limitations in effect on January 1, 1983, not less than once annually to reflect changes in the general level of construction costs.[28]

(j)(1) The Secretary may not approve the prepayment of any loan made under this section, or transfer such loan, unless such prepayment or transfer is made as part of a transaction that will ensure that the project involved will continue to operate until the original maturity date of such loan in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement entered into under this section and any other loan agreements entered into under other provisions of law.

(2) The Secretary may not sell any mortgage held by the Secretary as security for a loan made under this section.[29]

(k)(1) In the process of selecting projects for loans under this section, the Secretary shall assure the inclusion of special design features and congregate space if necessary to meet the special needs of elderly and handicapped residents.

(2) The Secretary shall encourage the provision of small and scattered site group homes and independent living facilities for nonelderly handicapped persons and families.[30]

(l) The basis for selection of a contractor to be employed in the development or construction of a project assisted under this section shall be determined by the project sponsor or borrower if the development cost of the project is less than $2,000,000, if the project rentals will be less than 110 per centum of the fair market rent applicable to projects financed under this section, or if the sponsor of the project is a labor organization.[31] The Secretary shall not impose difference[32] requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower.[33]

(m) Nothing in this section authorizes the Secretary to prohibit any sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed with the loan, and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.[34]

* * * * * * *

---

[24] P.L. 98-181, §223(d)(3), struck out "handicapped persons" and substituted "persons described in the first sentence of this subsection".

[25] P.L. 98-181, §223(d)(5), struck out "and".
P.L. 98-479, §102(c)(2)(A), inserted "and".

[26] P.L. 98-181, §223(d)(4), struck out "handicapped persons" and substituted "persons described in the first sentence of this subsection who are".

[27] P.L. 98-181, §223(d)(6), struck out the period and substituted "; and".
P.L. 98-479, §102(c)(2)(B), struck out "; and" and substituted a period.

[28] P.L. 98-181, §223(e), added subsection (i).

[29] P.L. 98-181, §223(e), added subsection (j).

[30] P.L. 98-181, §223(e), added subsection (k).

[31] P.L. 98-181, §223(e), added subsection (l).

[32] As in original. Probably should be "different".

[33] P.L. 98-479, §102(c)(3), added this sentence.

[34] P.L. 98-181, §223(e), added subsection (m).

[*Internal References.*—Social Security Act §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1402(a)(8)(C), 1602(a)(14)(b)(State), and 1612(b) have footnotes referring to P.L. 86-372. P.L. 73-479, §231(f), P.L. 89-73, §203(b), and P.L. 95-557, §410(b), cite §202 of the Housing Act of 1959.]

P.L. 87-293, Approved September 22, 1961 (75 Stat. 612)

Peace Corps Act

* * * * * * *

PEACE CORPS VOLUNTEERS

SEC. 5. [22 U.S.C. 2504] (a) The President may enroll in the Peace Corps for service abroad qualified citizens and nationals of the United States (referred to in this Act as "volunteers"). The terms and conditions of the enrollment, training, compensation, hours of work, benefits, leave, termination, and all other terms and conditions of the service of volunteers shall be exclusively those set forth in this Act and those consistent therewith which the President may prescribe; and, except as provided in this Act, volunteers shall not be deemed officers or employees or otherwise in the service or employment of, or holding office under, the United States for any purpose. In carrying out this subsection, there shall be no[1] discrimination against any person on account of race, sex, creed, or color.

(b) Volunteers shall be provided with such living, travel, and leave allowances, and such housing, transportation, supplies, equipment, subsistence, and clothing as the President may determine to be necessary for their maintenance and to insure their health and their capacity to serve effectively. Supplies or equipment provided volunteers to insure their capacity to serve effectively may be transferred to the government or to other entities of the country or area with which they have been serving, when no longer necessary for such purpose, and when such transfers would further the purposes of this Act. Transportation and travel allowances may also be provided, in such circumstances as the President may determine, for applicants for enrollment to or from places of training and places of enrollment, and for former volunteers from places of termination to their homes in the United States.

(c) Volunteers shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President. The readjustment allowance of each volunteer shall be payable on his return to the United States: *Provided, however*, That, under such circumstances as the President may determine, the accrued readjustment allowance, or any part thereof, may be paid to the volunteer, members of his family or others, during the period of his service, or prior to his return to the United States. In the event of the volunteer's death during the period of his service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582(b) of title 5, United States Code. For purposes of the Internal Revenue Code of 1954 (26 U.S.C.), a volunteer shall be deemed to be paid and to receive each amount of a readjustment allowance to which he is entitled after December 31, 1964, when such amount is transferred from funds made available under this Act to the fund from which such readjustment allowance is payable.

[(d) Repealed.]

(e) Volunteers shall receive such health care during their service, applicants for enrollment shall receive such health examinations preparatory to their service, applicants for enrollment who have accepted an invitation to begin a period of training under section 8(a) of this Act shall receive such immunization and dental care preparatory to their service, and former volunteers shall receive such health examinations within six months after termination of their service, as the President may deem necessary or appropriate. Subject to such conditions as the President may prescribe, such health care may be provided in any facility of any agency of the United States Government, and in such cases the appropriation for maintaining and operating such facility shall be reimbursed from appropriations available under this Act.

(f)(1) Any period of satisfactory service of a volunteer under this Act shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(A) for purposes of section 816(a) of the Foreign Service Act of 1980 and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

---

[1] P.L. 99-83, §1105(b), struck out "no political test shall be required or taken into consideration, nor shall there be any" and substituted ", there shall be no".

(B) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(2) For the purposes of paragraph (1)(A) of this subsection, volunteers and volunteer leaders shall be deemed to be receiving compensation during their service at the respective rates of readjustment allowances payable under sections 5(c) and 6(1) of this Act.

(g) The President may detail or assign volunteers or otherwise make them available to any entity referred to in paragraph (1) of section 10(a) on such terms and conditions as he may determine: *Provided*, That not to exceed two hundred volunteers may be assigned to carry out secretarial or clerical duties on the staffs of the Peace Corps representatives abroad: *Provided, however*, That any volunteer so detailed or assigned shall continue to be entitled to the allowances, benefits and privileges of volunteers authorized under or pursuant to this Act.

(h) Volunteers shall be deemed employees of the United States Government for the purposes of the Federal Tort Claims Act and any other Federal tort liability statute, the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc et seq.), the Act of December 23, 1944, chapter 716, section 1, as amended (31 U.S.C. 492a), section 5584 of title 5, United States Code (and readjustment allowances paid under this Act shall be considered as pay for purposes of such section), and section 1 of the Act of June 4, 1920 (41 Stat. 750), as amended (22 U.S.C. 214).

(i) The service of a volunteer may be terminated at any time at the pleasure of the President.

(j) Upon enrollment in the Peace Corps, every volunteer shall take the oath prescribed for persons appointed to any office of honor or profit by section 3331 of title 5, United States Code, and shall swear (or affirm) that he does not advocate the overthrow of our constitutional form of government in the United States, and that he is not a member of an organization that advocates the overthrow of our constitutional form of government in the United States, knowing that such organization so advocates.

(k) In order to assure that the skills and experience which former volunteers have derived from their training and their service abroad are best utilized in the national interest, the President may, in cooperation with agencies of the United States, private employers, educational institutions and other entities of the United States, undertake programs under which volunteers would be counseled with respect to opportunities for further education and employment.

(l) Notwithstanding any other provision of law, counsel may be employed and counsel fees, court costs, bail, and other expenses incident to the defense of volunteers may be paid in foreign judicial or administrative proceedings to which volunteers have been made parties.

(m) The minor children of a volunteer living with the volunteer may receive—

(1) such living, travel, education, and leave allowances, such housing, transportation, subsistence, and essential special items of clothing as the President may determine;

(2) such health care, including health care following the volunteer's service or illness or injury incurred during such service, and health and accident insurance, as the President may determine and upon such terms as he may determine, including health care in any facility referred to in subsection (e) of this section, subject to such conditions as the President may prescribe and subject to reimbursement of appropriations as provided in such subsection (e);

(3) such orientation, language, and other training necessary to accomplish the purposes of this Act as the President may determine; and

(4) the benefits of subsection (l) of this section on the same basis as volunteers.

(n) The costs of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a volunteer who has one or more minor children at the time of his entering a period of pre-enrollment training may be paid from the date of his departure from his place of residence to enter training until no later than three months after termination of his service.

PEACE CORPS VOLUNTEER LEADERS

SEC. 6. [22 U.S.C. 2505] The President may enroll in the Peace Corps qualified citizens or nationals of the United States whose services are required for supervisory or other special duties or responsibilities in connection with programs under this Act (referred to in this Act as "volunteer leaders"). The ratio of the total number of volunteer leaders to the total number of volunteers in service at any one time shall not exceed one to twenty-five. Except as otherwise provided in this Act, all of the provisions of this Act applicable to volunteers shall be applicable to volunteer leaders, and the term "volunteers" shall include "volunteer leaders"; *Provided, however,* That—

(1) volunteer leaders shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President;

(2) spouses and minor children of volunteer leaders may receive such living, travel, and leave allowances and such housing, transportation, subsistence, and essential special items of clothing, as the President may determine, but the authority contained in this paragraph shall be exercised only under exceptional circumstances;

(3) spouses and minor children of volunteer leaders accompanying them may receive such health care as the President may determine and upon such terms as he may determine, including health care in any facility referred to in section 5(e) of this Act, subject to such conditions as the President may prescribe and subject to reimbursement of appropriations as provided in section 5(e); and

(4) spouses and minor children of volunteer leaders accompanying them may receive such orientation, language, and other training necessary to accomplish the purposes of this Act as the President may determine.

* * * * * * *

[*Internal References.*—Social Security Act §205(p)(1), §209(end), and §210(o) cite the Peace Corps Act; and §209(end) cites §5(c) and §6(1) of the Peace Corps Act.]

P.L. 87-543, Approved July 25, 1962 (76 Stat. 172)
Public Welfare Amendments of 1962

* * * * * * *

SEC. 141.

* * * * * * *

(b) [42 U.S.C. 1382e note] No payment may be made to a State under title I, X, or XIV of the Social Security Act for any period for which such State receives any payments under title XVI of such Act or any period thereafter.

* * * * * * *

(f) [42 U.S.C. 1382e note] In the case of any State which has a State plan approved under title XVI of the Social Secuirty Act, any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403, shall, for purposes of section 1603(b) of such Act, be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act.

* * * * * * *

[*Internal References.*—Social Security Act titles I, X, and XIV have footnotes referring to P. L. 87-543.]

P.L. 87-781, Approved October 10, 1962 (76 Stat. 780)
Drug Amendments of 1962

SEC. 107. [21 U.S.C. 321 note]

* * * * * * *

(c)(1) As used in this subsection, the term "enactment date" means the date of enactment of this Act; and the term "basic Act" means the Federal Food, Drug, and Cosmetic Act[1].

---

[1] P.L. 75-717 (Vol. II, p. 241).

* * * * * * *

(3) In the case of any drug with respect to which an application filed under section 505(b) of the basic Act is deemed to be an approved application on the enactment date by virtue of paragraph (2) of this subsection—

(A) the amendments made by this Act to section 201(p), and to subsection (b) and (d) of section 505, of the basic Act, insofar as such amendments relate to the effectiveness of drugs, shall not, so long as approval of such application is not withdrawn or suspended pursuant to section 505(e) of that Act, apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application, but shall apply to any changed use, or conditions of use, prescribed, recommended, or suggested in its labeling, including such conditions of use as are the subject of an amendment or supplement to such application pending on, or filed after, the enactment date; and

(B) clause (3) of the first sentence of section 505(e) of the basic Act, as amended by this Act, shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application (except with respect to such use, or conditions of use, as are the subject of an amendment or supplement to such approved application, which amendment or supplement has been approved after the enactment date under section 505 of the basic Act as amended by this Act) until whichever of the following first occurs: (i) the expiration of the two-year period beginning with the enactment date; (ii) the effective date of an order under section 505(e) of the basic Act, other than clause (3) of the first sentence of such section 505(e), withdrawing or suspending the approval of such application.

* * * * * * *

[*Internal Reference.*—Social Security Act §1862(c)(1)(A) cites §107(c)(3) of the Drug Amendments of 1962.]

P.L. 88-352, Approved July 2, 1964 (78 Stat. 241)

Civil Rights Act of 1964

* * * * * * *

Title VI—Nondiscrimination in Federally Assisted Programs

SEC. 601. [42 U.S.C. 2000d] No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. [42 U.S.C. 2000d-1] Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. [42 U.S.C. 2000d-2] Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. [42 U.S.C. 2000d-3] Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. [42 U.S.C. 2000d-4] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

* * * * * * *

[*Internal References.*—Social Security Act §508(a)(1) and (b)(2) cite title VI of the Civil Rights Act of 1964 and SS Act titles I, IV, V, VII, IX, X, XI, XIV, XVI (State), XVIII, XIX, and XX have footnotes referring to P.L. 88-352.]

P.L. 88-525, Approved August 31, 1964 (78 Stat. 703)[1]
Food Stamp Act Of 1977

Table of Contents[2]

		Page
Sec. 1.	Short Title	421
Sec. 2.	Declaration of Policy	422
Sec. 3.	Definitions	422
Sec. 4.	Establishment of the Food Stamp Program	426
Sec. 5.	Eligible Households	426
Sec. 6.	Eligibility Disqualifications	432
Sec. 7.	Issuance and Use of Coupons	438
Sec. 8.	Value of Allotment	439
Sec. 9.	Approval of Retail Food Stores and Wholesale Food Concerns	440
Sec. 10.	Redemption of Coupons	441
Sec. 11.	Administration	442
Sec. 12.	Civil Money Penalties and Disqualification of Retail Food Stores and Wholesale Food Concerns	448
Sec. 13.	Collection and Disposition of Claims	449
Sec. 14.	Administrative and Judicial Review	450
Sec. 15.	Violations and Enforcement	451
Sec. 16.	Administrative Cost-Sharing and Quality Control	452
Sec. 17.	Research, Demonstration, and Evaluations	455
Sec. 18.	Authorization for Appropriations	457
Sec. 19.	Block Grant	458
Sec. 20.	Workfare	460

SHORT TITLE

SECTION. 1. [7 U.S.C. 2011 note] This Act may be cited as the "Food Stamp Act of 1977".

---

[1] P.L. 95-113, §1301, amended the Food Stamp Act of 1964 in its entirety, effective October 1, 1977.
[2] This table of contents does not appear in the law.

DECLARATION OF POLICY

SEC. 2. [7 U.S.C. 2011] It is hereby declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

DEFINITIONS

SEC. 3. [7 U.S.C. 2012] As used in this Act, the term:

(a) "Allotment" means the total value of coupons a household is authorized to receive during each month.

(b) "Authorization card" means the document issued by the State agency to an eligible household which shows the allotment the household is entitled to be issued.

(c) "Certification period" means the period for which households shall be eligible to receive authorization cards. For those households that are required to submit periodic reports under section 6(c)(1) of this Act, the certification period shall be at least six months but no longer than twelve months except that the foregoing limits on the certification period may, with the approval of the Secretary, be waived by a State agency for certain categories of households where such waiver will[3] improve the administration of the program. For households that are not required to submit periodic reports, the certification period shall be determined as follows:

(1) In the case of a household all of whose members are included in a federally aided public assistance or general assistance grant, the period shall coincide with the period of such grant.

(2) In the case of all other households, the period shall be not less than three months: *Provided*, That such period may be up to twelve months for any household consisting entirely of unemployable or elderly or primarily self-employed persons, or as short as circumstances require for those households as to which there is a substantial likelihood of frequent changes in income or household status, and for any household on initial certification, as determined by the Secretary. The maximum limit of twelve months for such period under the foregoing proviso may be waived by the Secretary where such waiver will improve the administration of the program.[4]

(d) "Coupon" means any coupon, stamp, or type of certificate issued pursuant to the provisions of this Act.

(e) "Coupon issuer" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has delegated functional responsibility in connection with, the issuance of coupons to households.

(f) "Drug addiction or alcoholic treatment and rehabilitation program" means any such program conducted by a private nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide[5] treatment that can lead to the rehabilitation of drug addicts or alcoholics.[6]

(g) "Food" means (1) any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9)[7] of this subsection, (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household, (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits under title XVI of the Social Security Act, and their spouses, meals prepared by and served in senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly, (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices, (5) in the case of narcotics addicts or alcoholics served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs, (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence, (7) in the case of disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act, meals prepared and served under such arrangement,[8] (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)[9].

---

[3] P.L. 98-204, §3(1), struck out "limit of twelve months may be waived by the Secretary to" and substituted "foregoing limits on the certification period may, with the approval of the Secretary, be waived by a State agency for certain categories of households where such waiver will".

[4] P.L. 98-204, §3(2), added this sentence.

[5] P.L. 99-198, §1501(a)(1), struck out "which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Public Law 91-616 (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970) and Public Law 92-255 (Drug Abuse Office and Treatment Act of 1972) as providing" and substituted ", or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide".

[6] P.L. 99-88, 99 Stat. 297, provided that notwithstanding any other provision of law, the provisions of this subsection, as amended, concerning private, nonprofit drug addiction or alcohol treatment and rehabilitation programs, shall henceforth also be applicable to publicly operated community health centers.

[7] P.L. 99-570, §11002(a)(1), struck out "and (8)" and substituted "(8), and (9)", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

(h) "Food stamp program" means the program operated pursuant to the provisions of this Act.

(i) "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption; except that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member. Notwithstanding clause (1) of the preceding sentence, an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers, as certified by a licensed physician, from a disability which would be considered a permanent disability under section 221(i) of the Social Security Act (42 U.S.C. 421(i)) or from a severe, permanent, and disabling physical or mental infirmity which is not symptomatic of a disease shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals, if the income (as determined under section 5(d)) of the others, excluding the spouse, does not exceed the poverty line, as described in section 5(c)(1), by more than 65 per centum. In no event shall any individual or group of individuals constitute a household if they reside in an institution or boarding house, or else live with others and pay compensation to the others for meals. For the purposes of this subsection, residents of federally subsidized housing for the elderly, disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act, temporary residents of public or private nonprofit shelters for battered women and children, residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,[10] and narcotics addicts or alcoholics who live under the supervision of a private nonprofit institution, or a publicly operated community mental health center,[11] for the purpose of regular participation in a drug or alcoholic treatment program shall not be considered residents of institutions and shall be considered individual households.[12]

---

[8] P.L. 99-570, §11002(a)(2), struck out "and".

[9] P.L. 99-570, §11002(a)(3), added paragraph (9), effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

(j) "Reservation" means the geographically defined area or areas over which a tribal organization (as that term is defined in section 3(p) of this Act) exercises governmental jurisdiction.

(k) "Retail food store" means (1) an establishment or recognized department thereof or house-to-house trade route, over 50 per centum of whose food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry,[13] consists of staple food items for home preparation and consumption, such as meat, poultry, fish, bread, cereals, vegetables, fruits, dairy products, and the like, but not including accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices, (2) an establishment, organization, program, or group living arrangement referred to in subsections (g)(3), (4), (5), (7), (8), and (9)[14] of this section, (3) a store purveying the hunting and fishing equipment described in subsection (g)(6) of this section, and (4) any private nonprofit cooperative food purchasing venture, including those in which the members pay for food purchased prior to the receipt of such food.

(l) "Secretary" means the Secretary of Agriculture.

(m) "State" means the fifty States, the District of Columbia, Guam, the Virgin Islands of the United States, and the reservations of an Indian tribe whose tribal organization meets the requirements of this Act for participation as a State agency.

(n) "State agency" means (1) the agency of State government, including the local offices thereof, which has the responsibility for the administration of the federally aided public assistance programs within such State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs, and (2) the tribal organization of an Indian tribe determined by the Secretary to be capable of effectively administering a food distribution program under section 4(b) of this Act or a food stamp program under section 11(d) of this Act.

(o) "Thrifty food plan" means the diet required to feed a family of four persons consisting of a man and a woman twenty through fifty[15], a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall (1) make household-size adjustments (based on the unrounded cost of such diet) taking into account economies of scale, (2) make cost adjustments in the thrifty food plan for Hawaii and the urban and rural parts of Alaska to reflect the cost of food in Hawaii and urban and rural Alaska, (3) make cost adjustments in the separate thrifty food plans for Guam, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia, (4) through January 1, 1980, adjust the cost of such diet every January 1 and July 1 to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the six months ending the preceding September 30 and March 31, respectively, (5) on January 1, 1981, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding September 30, (6) on October 1, 1982, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twenty-one months ending June 30, 1982, reduce the cost of such diet by 1 per centun[16], and round the result to the nearest lower dollar increment for each household size, (7) on October 1, 1983, and October 1, 1984, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30, reduce the cost of such diet by 1 per centum, and round the result to the nearest lower dollar increment for each household size, and (8) on October 1, 1985, and each October 1 thereafter, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30 and round the result to the nearest lower dollar increment for each household size: *Provided*, That the periods upon which such adjustments are based shall be subject to revision by Act of Congress; and, as of every January 1 thereafter, for the nine months ending the preceding September 30 and the subsequent three months ending December 31 as projected by the Secretary in light of the best available data.

---

[10] P.L. 99-570, §11002(b), inserted "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[11] P.L. 99-198, §1501(a)(2), inserted ", or a publicly operated community mental health center,".

[12] See footnote 6.

[13] P.L. 99-198, §1502, inserted ", as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry,".

[14] P.L. 99-570, §11002(c), struck out "and (8)" and substituted "(8), and (9)", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[15] P.L. 99-198, §1503, struck out "fifty-four" and substituted "fifty"

[16] As in original. Possibly should be "per centum".

(p) "Tribal organization" means the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as the term "Indian tribe" is defined in the Indian Self-Determination Act (25 U.S.C. 450b(b)), as well as any Indian tribe, band, or community holding a treaty with a State government.

(q) "Allowable medical expenses" means expenditures for (1) medical and dental care, (2) hospitalization or nursing care (including hospitalization or nursing care of an individual who was a household member immediately prior to entering a hospital or nursing home), (3) prescription drugs when prescribed by a licensed practitioner authorized under State law and over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional, (4) health and hospitalization insurance policies (excluding the costs of health and accident or income maintenance policies), (5) medicare premiums related to coverage under title XVIII of the Social Security Act, (6) dentures, hearing aids, and prosthetics (including the costs of securing and maintaining a seeing eye dog), (7) eye glasses prescribed by a physician skilled in eye disease or by an optometrist, (8) reasonable costs of transportation necessary to secure medical treatment or services, and (9) maintaining an attendant, homemaker, home health aide, housekeeper, or child care services due to age, infirmity, or illness.

(r) "Elderly or disabled member" means a member of a household who—

(1) is sixty years of age or older;

(2) receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), federally or State administered supplemental benefits of the type described in section 1616(a) of the Social Security Act if the Secretary determines that such benefits are conditioned on meeting the disability or blindness criteria used under title XVI of the Social Security Act, or federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note)[17];

(3) receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act (42 U.S.C. 301 et seq.) or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i))[18];

(4) is a veteran who—

(A) has a service-connected or non-service-connected[19] disability which is rated as total under title 38, United States Code; or

(B) is considered in need of regular aid and attendance or permanently housebound under such title;

(5) is a surviving spouse of a veteran and—

(A) is considered in need of regular aid and attendance or permanently housebound under title 38, United States Code; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i));[20]

(6) is a child of a veteran and—

(A) is considered permanently incapable of self-support under section 414 of title 38, United States Code; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i)); or[21]

---

[17] P.L. 99-198, §1504(1), inserted ", federally or State administered supplemental benefits of the type described in section 1616(a) of the Social Security Act if the Secretary determines that such benefits are conditioned on meeting the disability or blindness criteria used under title XVI of the Social Security Act, or federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note)".

[18] P.L. 99-198, §1504(2), inserted "or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i))".

[19] P.L. 99-198, §1504(3), inserted "or non-service-connected".

[20] P.L. 99-198, §1504(4), struck out "or".

[21] P.L. 99-198, §1504(5), struck out the period and substituted "; or".

(7) is an individual receiving an annuity under section 2(a)(1)(iv) or 2(a)(1)(v) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(a)(1)(iv) or 231a(a)(1)(v)), if the individual's service as an employee under the Railroad Retirement Act of 1974, after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act, and if an application for disability benefits had been filed.[22]

ESTABLISHMENT OF THE FOOD STAMP PROGRAM

SEC. 4. [7 U.S.C. 2013] (a) Subject to the availability of funds appropriated under section 18 of this Act, the Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this Act[23]. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this Act shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

(b)[24] Distribution of commodities, with or without the food stamp program, shall[25] be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization. In the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for such distribution, except that, if the Secretary determines that the tribal organization is capable of effectively and efficiently administering such distribution, then such tribal organizations shall administer such distribution: *Provided*, That the Secretary shall not approve any plan for such distribution which permits any household on any Indian reservation to participate simultaneously in the food stamp program and the distribution of federally donated foods. The Secretary is authorized to pay such amounts for administrative costs of such distribution on Indian reservations as the Secretary finds necessary for effective administration of such distribution by a State agency or tribal organization.

(c) The Secretary shall issue such regulations consistent with this Act as the Secretary deems necessary or appropriate for the effective and efficient administration of the food stamp program and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5 of the United States Code. In addition, prior to issuing any regulation, the Secretary shall provide the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation with a detailed statement justifying it.

ELIGIBLE HOUSEHOLDS

SEC. 5. [7 U.S.C. 2014] (a) Participation in the food stamp program shall be limited to those households whose incomes and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Notwithstanding any other provisions of this Act except sections 6(b), 6(d)(2), and 6(g) and the third sentence of section 3(i), and during the period beginning on the date of the enactment of the Food Security Act of 1985 and ending on September 30, 1989, households in which each member receives benefits under a State plan approved under part A of title IV of the Social Security Act, supplemental security income benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act, shall be eligible to participate in the food stamp program.[26] Assistance under this program shall be furnished to all eligible households who make application for such participation.

(b) The Secretary shall establish uniform national standards of eligibility (other than the income standards for Alaska, Hawaii, Guam, and the Virgin Islands of the

---

[22] P.L. 99-198, §1504(6), added paragraph (7).

[23] P.L. 99-198, §1505(a), inserted ", except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this Act".

[24] P.L. 99-198, §1506(1), struck out "In jurisdictions where the food stamp program is in operation, there shall be no distribution of federally donated foods to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, or (2) for the purpose of the commodity supplemental food program.".

[25] P.L. 99-198, §1506(2), struck out "also".

[26] P.L. 99-198, §1507(a)(1), added this sentence.

United States established in accordance with subsections (c) and (e) of this section) for participation by households in the food stamp program in accordance with the provisions of this section. No plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary, and no State agency shall impose any other standards of eligibility as a condition for participating in the program.

(c) The income standards of eligibility shall provide that a household shall be ineligible to participate in the food stamp program if—

(1) the household's income (after the exclusions and deductions provided for in subsections (d) and (e)) exceeds the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), for the forty-eight contiguous States and the District of Columbia, Alaska, Hawaii, the Virgin Islands of the United States, and Guam, respectively; and

(2) in the case of a household that does not include an elderly or disabled member, the household's income (after the exclusions provided for in subsection (d) but before the deductions provided for in subsection (e)) exceeds such poverty line by more than 30 per centum.

In no event shall the standards of eligibility for the Virgin Islands of the United States or Guam exceed those in the forty-eight contiguous States.

(d) Household income for purposes of the food stamp program shall include all income from whatever source excluding only (1) any gain or benefit which is not in the form of money payable directly to a household, except as provided in subsection (k),[27] and except as provided in subsection (k),[28] (2) any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter, subject to modification by the Secretary in light of section 5(f) of this Act, (3) all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of post-secondary[29] education or school for the handicapped, and to the extent loans include any origination fees and insurance premiums,[30] (4) all loans other than educational loans on which repayment is deferred, (5) reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household: *Provided*, That no portion of benefits provided under title IV-A of the Social Security Act, to the extent it is attributable to an adjustment for work-related or child care expenses, no portion of any non-Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like that are provided for living expenses, and no portion of any Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees,[31] shall be considered such reimbursement, (6) moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member, (7) income earned by a child who is a member of the household, who is a student, and who has not attained his eighteenth birthday, (8) moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds, rebates, or credits, retroactive lump-sum social security or railroad retirement pension payments and retroactive lump-sum insurance settlements: *Provided*, That such payments shall be counted as resources, unless specifically excluded by other laws, (9) the cost of producing self-employed income, but household income that otherwise is included under this subsection shall be reduced by the extent that the cost of producing self-employment income exceeds the income derived from self-employment as a farmer[32], and[33] (10) any income that any other Federal law specifically excludes from consideration as income for purposes of determining eligibility for the food stamp program except as otherwise provided in subsection (k) of this section[34], (11) any payments or allowances made under (A) any Federal law for the purpose of providing energy assistance, or (B) any State or local laws for the purpose of providing energy assistance, designated by the State or local legislative body authorizing such payments or allowances as energy assistance, and determined by the Secretary to be calculated as if provided by the State or local government involved on a seasonal basis for an aggregate period not to exceed six months in any year even if such payments or allowances (including tax credits) are not provided on a seasonal basis because it would be administratively infeasible or impracticable to do so,[35] (12) through September 30 of any fiscal year, any increase in income attributable to a cost-of-living adjustment made on or after July 1 of such fiscal year under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq.), section 3(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(1)), or section 3112 of title 38, United States Code, if the household was certified as eligible to participate in the food stamp program or received an allotment in the month immediately preceding the first month in which the adjustment was effective, and (13) at the option of a State agency and subject to subsection (m), child support payments that are excluded under section 402(a)(8)(A)(vi) of the Social Security Act (42 U.S.C. 602(a)(8)(A)(vi))[36].

---

[27] P.L. 99-198, §1508(1), inserted "except as provided in subsection (k),".

[28] P.L. 99-198, §1509(a)(1), inserted "and except as provided in subsection (k),". As in original. Seems to be a duplication of the amendment made by P.L. 99-198, §1508(1).

[29] P.L. 99-198, §1509(a)(2)(A), struck out "higher" and substituted "post-secondary".

[30] P.L. 99-198, §1509(a)(2)(B), inserted "and to the extent loans include any origination fees and insurance premiums,".

[31] P.L. 99-198, §1509(a)(3), inserted "no portion of any non-Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like that are provided for living expenses, and no portion of any Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees,".

[32] P.L. 99-198, §1509(a)(4), inserted ", but household income that otherwise is included under this subsection shall be reduced by the extent that the cost of producing self-employment income exceeds the income derived from self-employment as a farmer".

[33] As in original. The "and" before "(10)" should be stricken.

[34] P.L. 99-198, §1509(a)(5), inserted "except as otherwise provided in subsection (k) of this section".

(e) In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household, except that households in Alaska, Hawaii, Guam, and the Virgin Islands of the United States shall be allowed a standard deduction of $145, $120, $170, and $75, respectively. Such standard deductions shall be adjusted (1) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food and the homeowners' costs and maintenance and repair[37] component of shelter costs, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (2) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, and (3) on October 1, 1985, and each October 1 thereafter, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30. All households with earned income shall be allowed an additional deduction of 20[38] per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses. Households, other than those households containing an elderly or disabled member, shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to (1) a dependent care deduction, the maximum allowable level of which shall be $160 a month[39], for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment and[40] (2) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed: *Provided*, That the amount of such excess shelter expense deduction shall not exceed $147 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $256, $210, $179, and $109 a month, respectively, adjusted on October 1, 1986, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the twelve months ending the preceding June 30[41] [42]. In computing the excess shelter expense deduction under clause (2) of the preceding sentence, a State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary, except that a State agency may use an allowance which does not fluctuate within a year to reflect seasonal variations. An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense, as the case may be, or does incur a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households, with regard to such expense, only for excess utility costs. No such allowance may be used for a household that shares such expense with, and lives with, another individual not participating in the food stamp program, another household participating in the food stamp program, or both, unless the allowance is prorated between the household and the other individual, household, or both. If a State agency elects to use a standard utility allowance that reflects heating or cooling costs, it shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) or other similar energy assistance program, provided that the household still incurs out-of-pocket heating or cooling expenses.[43] A State agency may use a separate standard utility allowance for households on behalf of which such payment is made, but may not be required to do so.[44] A State agency not electing to use a separate allowance, and making a single standard utility allowance available to households incurring heating or cooling expenses (other than households described in the sixth sentence of this subsection) may not be required to reduce such allowance due to the provision (direct or indirect) of assistance under the Low-Income Home Energy Assistance Act of 1981.[45] For purposes of the food stamp program, assistance provided under the Low-Income Home Energy Assistance Act of 1981 shall be considered to be prorated over the entire heating or cooling season for which it was provided.[46] A State agency shall allow a household to switch between any standard utility allowance and a deduction based on its actual utility costs at the end of any certification period and up to one additional time during each twelve-month period.[47] Households containing an elderly or disabled member shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to—

---

[35] P.L. 99-198, §1510(1)(A), struck out "and".

[36] P.L. 99-198, §1510(1)(B), added paragraph (13).

[37] P.L. 99-198, §1511(1), struck out "homeownership" and substituted "homeowners' costs and maintenance and repair".

[38] P.L. 99-198, §1511(2), struck out "18" and substituted "20".

[39] P.L. 99-198, §1511(3)(B), struck out "the same as that for the excess shelter expense deduction contained in clause (2) of this subsection" and substituted "$160 a month".

[40] P.L. 99-198, §1511(3)(C), struck out ", or" and substituted "and".

[41] P.L. 99-198, §1511(3)(A), amended this proviso in its entirety.

[42] P.L. 99-198, §1511(3)(D), struck out paragraph (3).

(A) an excess medical expense deduction for that portion of the actual cost of allowable medical expenses, incurred by elderly or disabled members, exclusive of special diets, that exceed $35 a month;

(B) a dependent care deduction, the maximum allowable level of which shall be the same as that contained in clause (1)[48] of the fourth sentence of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education that is preparatory for employment; and

(C) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed.[49]

(f)(1)(A) Household income for those households that, by contract for other than an hourly or piecework basis or by self-employment, derive their annual income in a period of time shorter than one year shall be calculated by averaging such income over a twelve-month period. Notwithstanding the preceding sentence, if the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business earnings, the State agency shall calculate the self-employment income based on anticipated earnings.[50]

(B) Household income for those households that receive nonexcluded income of the type described in subsection (d)(3) of this section shall be calculated by averaging such income over the period for which it is received.

(2)(A) Household income for—

(i) migrant farmworker households, and

(ii) households—

(I) that have no earned income, and

(II) in which all adult members are elderly or disabled members,

shall be calculated on a prospective basis, as provided in paragraph (3)(A).[51]

(B) Household income for households that[52] are permitted to report household circumstances at specified intervals less frequent than monthly under the first sentence of[53] section 6(c)(1) of this Act,[54] may, with the approval of the Secretary, be calculated by a State agency on a prospective basis, as provided in paragraph (3)(A) of this subsection.[55]

---

[43] P.L. 99-198, §1511(4), added this sentence.

[44] See footnote 43.

[45] See footnote 43.

[46] See footnote 43.

[47] See footnote 43.

[48] P.L. 99-500, §638(a), struck out "for the excess shelter expense deduction contained in clause (2)" and substituted "contained in clause (1)".

P.L. 99-591, §638(a), made the same amendment as P.L. 99-500, §638(a).

[49] See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2605(f), for calculating the excess shelter expense deduction and/or standard utility allowance, p. 656.

[50] P.L. 99-198, §1512, added this sentence.

[51] P.L. 99-198, §1513(a)(1), amended subparagraph (A) in its entirety.

[52] P.L. 99-198, §1513(a)(2)(A), struck out "(i)".

(C)[56] Except as provided in subparagraphs (A) and (B), household income for households that have earned income and for households that include any member who has recent work history shall be calculated on a retrospective basis as provided in paragraph (3)(B).[57]

(D) Household income for all other households may be calculated, at the option of the State agency, on a prospective basis as provided in paragraph (3)(A) or on a retrospective basis as provided in paragraph (3)(B).[58]

(3)(A) Calculation of household income on a prospective basis is the calculation of income on the basis of the income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined. Such calculation shall be made in accordance with regulations prescribed by the Secretary which shall provide for taking into account both the income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined and the income received by the household during the preceding thirty days.

(B) Calculation of household income on a retrospective basis is the calculation of income for the period for which eligibility or benefits are being determined on the basis of income received in a previous period. Such calculation shall be made in accordance with regulations prescribed by the Secretary which may provide for the determination of eligibility on a prospective basis in some or all cases in which benefits are calculated under this paragraph. Such regulations shall provide for supplementing the initial allotments of newly applying households in those cases in which the determination of income under this paragraph causes serious hardship.

(4) In promulgating regulations under this subsection, the Secretary shall consult with the Secretary of Health and Human Services in order to assure that, to the extent feasible and consistent with the purposes of this Act and the Social Security Act, the income of households receiving benefits under this Act and title IV-A of the Social Security Act is calculated on a comparable basis under the two Acts. The Secretary is authorized, upon the request of a State agency, to waive any of the provisions of this subsection (except the provisions of paragraph (2)(A)) to the extent necessary to permit the State agency to calculate income for purposes of this Act on the same basis that income is calculated under title IV-A of the Social Security Act in that State.

(g) The Secretary shall prescribe the types and allowable amounts of financial resources (liquid and nonliquid assets) an eligible household may own, and shall, in so doing, assure that a household otherwise eligible to participate in the food stamp program will not be eligible to participate if its resources exceed $2,000, or, in the case of a household which consists of or includes a member who is 60 years of age or older, if its resources exceed $3,000[59]. The Secretary shall, in prescribing inclusions in, and exclusions from, financial resources, follow the regulations in force as of June 1, 1982 (other than those relating to licensed vehicles and inaccessible resources[60]), and shall, in addition, include in financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, any licensed vehicle (other than one used to produce earned income or that is necessary for transportation of a physically disabled household member and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle[61]) used for household transportation or used to obtain or continue employment to the extent that the fair market value of any such vehicle exceeds $4,500, and, regardless of whether there is a penalty for early withdrawal, any savings or retirement accounts (including individual accounts). The Secretary shall exclude from financial resources the value of a burial plot for each member of a household.[62]

---

[53] P.L. 99-198, §1513(a)(2)(B), inserted "the first sentence of".

[54] P.L. 99-198, §1513(a)(2)(C), struck out clauses (ii) and (iii).

[55] P.L. 98-204, §4, added this subparagraph (B).

[56] P.L. 98-204, §4, redesignated the former subparagraph (B) as subparagraph (C).

[57] P.L. 99-198, §1513(a)(3), amended subparagraph (C) in its entirety.

[58] P.L. 99-198, §1513(a)(3), added subparagraph (D).

[59] P.L. 99-198, §1514(1), struck out "$1,500, or, in the case of a household consisting of two or more persons, one of whom is age 60 or over, if its resources exceed $3,000" and substituted "$2,000, or, in the case of a household which consists of or includes a member who is 60 years of age or older, if its resources exceed $3,000".

[60] P.L. 99-198, §1514(2)(A), inserted "and inaccessible resources".

[61] P.L. 99-198, §1514(2)(B), inserted "and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle".

[62] P.L. 99-198, §1514(3), added this sentence.

(h)(1) The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of title 5 of the United States Code.

(2) The Secretary shall—

(A) establish a Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and the regular food stamp program in the disaster area; and

(B) if the Secretary, in the Secretary's discretion, determines that it is cost-effective to send members of the Task Force to the disaster area, the Secretary shall send them to such area as soon as possible after the disaster occurs to provide direct assistance to State and local officials.[63]

(i)(1) For purposes of determining eligibility for and the amount of benefits under this Act for an individual who is an alien as described in section 6(f)(2)(B) of this Act, the income and resources of any person who as a sponsor of such individual's entry into the United States executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse if such spouse is living with the sponsor, shall be deemed to be the income and resources of such individual for a period of three years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(2)(A) The amount of income of a sponsor, and the sponsor's spouse if living with the sponsor, which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(i) the total yearly rate of earned and unearned income of such sponsor, and such sponsor's spouse if such spouse is living with the sponsor, shall be determined for such year under rules prescribed by the Secretary;

(ii) the amount determined under clause (i) of this subparagraph shall be reduced by an amount equal to the income eligibility standard as determined under section 5(c) of this Act for a household equal in size to the sponsor, the sponsor's spouse if living with the sponsor, and any persons dependent upon or receiving support from the sponsor or the sponsor's spouse if the spouse is living with the sponsor; and

(iii) the monthly income attributed to such alien shall be one-twelfth of the amount calculated under clause (ii) of this subparagraph.

(B) The amount of resources of a sponsor, and the sponsor's spouse if living with the sponsor, which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(i) the total amount of the resources of such sponsor and such sponsor's spouse if such spouse is living with the sponsor shall be determined under rules prescribed by the Secretary;

(ii) the amount determined under clause (i) of this subparagraph shall be reduced by $1,500; and

(iii) the resources determined under clause (ii) of this subparagraph shall be deemed to be resources of such alien in addition to any resources of such alien.

(C)(i) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this Act, be required to provide to the State agency such information and documentation with respect to the alien's sponsor and sponsor's spouse as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide such information and documentation which such alien or the sponsor provided in support of such alien's immigration application as the State agency may request.

(ii) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Secretary, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

---

[63] P.L. 99-198, §1515, amended paragraph (2) in its entirety.

(D) Any sponsor of an alien, and such alien, shall be jointly and severably liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid shall be recovered in accordance with the provisions of section 13(b)(2) of this Act.

(E) The provisions of this subsection shall not apply with respect to any alien who is a member of the sponsor's household, as defined in section 3(i) of this Act.

(j) Notwithstanding subsections (a) through (i), a State agency may consider a household in which all members of the household receive benefits under a State plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and whose income does not exceed the applicable income standard of eligibility described in subsection (c)(2) to have satisfied the resource limitations prescribed under subsection (g).[64]

(k)(1) For purposes of subsection (d)(1), except as provided in paragraph (2), assistance provided to a third party on behalf of a household by a State or local government shall be considered money payable directly to the household if the assistance is provided in lieu of—

(A) a regular benefit payable to the household for living expenses under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(B) a benefit payable to the household for living expenses under—

(i) a State or local general assistance program; or

(ii) another basic assistance program comparable to general assistance (as determined by the Secretary).

(2) Paragraph (1) shall not apply to—

(A) medical assistance;

(B) child care assistance;

(C) energy assistance;

(D) assistance provided by a State or local housing authority; or

(E) emergency and special assistance, to the extent excluded in regulations prescribed by the Secretary.[65]

(3) For purposes of subsection (d)(1), educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like that are provided to a third party on behalf of a household for living expenses shall be treated as money payable directly to the household.[66]

(l) Notwithstanding section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)), earnings to individuals participating in on-the-job training programs under section 204(5) of the Job Training Partnership Act shall be considered earned income for purposes of the food stamp program, except for dependents less than 19 years of age.[67]

(m) If a State agency excludes payments from income for purposes of the food stamp program under subsection (d)(13), such State agency shall pay to the Federal Government, in a manner prescribed by the Secretary, the cost of any additional benefits provided to households in such State that arise under such program as the result of such exclusion.[68]

ELIGIBILITY DISQUALIFICATIONS

SEC. 6. [7 U.S.C. 2015] (a) In addition to meeting the standards of eligibility prescribed in section 5 of this Act, households and individuals who are members of eligible households must also meet and comply with the specific requirements of this section to be eligible for participation in the food stamp program.

(b)(1) Any person who has been found by any State or Federal court or administrative agency to have intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes a violation of this Act, the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing coupons or authorization cards shall, immediately upon the rendering of such determination, become ineligible for further participation in the program—

(i) for a period of six months upon the first occasion of any such determination;

---

[64] P.L. 99-198, §1507(a)(2), states that during the period beginning December 23, 1985, and ending on September 30, 1989, this subsection shall not apply.

[65] P.L. 99-198, §1508(2), added subsection (k).

[66] P.L. 99-198, §1509(b), added paragraph (3).

[67] P.L. 99-198, §1509(c), added subsection (l).

[68] P.L. 99-198, §1510(2), added subsection (m).

(ii) for a period of one year upon the second occasion of any such determination; and

(iii) permanently upon the third occasion of any such determination.

During the period of such ineligibility, no household shall receive increased benefits under this Act as the result of a member of such household having been disqualified under this subsection.

(2) Each State agency shall proceed against an individual alleged to have engaged in such activity either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, or by referring such matters to appropriate authorities for civil or criminal action in a court of law.

(3) Such periods of ineligibility as are provided for in paragraph (1) of this subsection shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the ineligibility is based is subsequently reversed by a court of appropriate jurisdiction, but in no event shall the period of ineligibility be subject to review.

(4) The Secretary shall prescribe such regulations as the Secretary may deem appropriate to ensure that information concerning any such determination with respect to a specific individual is forwarded to the Office of the Secretary by any appropriate State or Federal entity for the use of the Secretary in administering the provisions of this section. No State shall withhold such information from the Secretary or the Secretary's designee for any reason whatsoever.

(c) No household shall be eligible to participate in the food stamp program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility.

(1) State agencies shall require households with respect to which household income is determined on a retrospective basis under section 5(f)(2)(C) of this Act to file periodic reports of household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may, with the prior approval of the Secretary, select categories of households (including all such households) that may report at specified less frequent intervals on a showing by the State agency, which is satisfactory to the Secretary, that to require households in such catagories to report monthly would result in unwarranted expenditures for administration of this subsection.[69] The Secretary may permit State agencies to accept, as satisfying the requirement that households report at such specified less frequent intervals, (i) recertifications conducted in accordance with section 11(e)(4) of this Act, (ii) in-person interviews conducted during a certification period, (iii) written reports filed by households, or (iv) such other documentation or actions as the Secretary may prescribe.[70] State agencies may require households, other than households with respect to which household income is required by section 5(f)(2)(A) to be calculated on a prospective basis, to file periodic reports of household circumstances in accordance with the standards prescribed by the Secretary under the preceding provisions of this paragraph.[71] Each household that is not required to file such periodic reports on a monthly basis shall be required to report or cause to be reported to the State agency changes in income or household circumstances which the Secretary deems necessary in order to assure accurate eligibility and benefit determinations.

(2) Any household required to file a periodic report under paragraph (1) of this subsection shall, (A) if it is eligible to participate and has filed a timely and complete report, receive its allotment, based on the reported information for a given month, within thirty days of the end of that month unless the Secretary determines that a longer period of time is necessary, (B) have available special procedures that permit the filing of the required information in the event all adult members of the household are mentally or physically handicapped or lacking in reading or writing skills to such a degree as to be unable to fill out the required forms, (C) have a reasonable period of time after the close of the month in which to file their reports on forms approved by the Secretary, and (D) be afforded prompt notice of failure to file any report timely or completely, and given a reasonable opportunity to cure that failure (with any applicable time requirements extended accordingly) and to exercise its rights under section 11(e)(10) of this Act.

(3) Reports required to be filed under paragraph (1) of this subsection shall be considered complete if, in accordance with standards prescribed by the Secretary, they contain sufficient information to enable the State agency to determine

---

[69] P.L. 99-198, §1513(b)(1), amended this sentence in its entirety.

[70] P.L. 98-204, §5, added this sentence.

[71] P.L. 99-198, §1513(b)(2), inserted this sentence.

household eligibility and allotment levels. All report forms, including those related to periodic reports of circumstances, shall contain a description, in understandable terms in prominent and bold face lettering, of the appropriate civil and criminal provisions dealing with violations of this Act including the prescribed penalties. Reports required to be filed monthly under paragraph (1) shall be the sole reporting requirement for subject matter included in such reports.[72] In promulgating regulations implementing these reporting requirements, the Secretary shall consult with the Secretary of Health and Human Services, and, wherever feasible, households that receive assistance under title IV-A of the Social Security Act and that are required to file comparable reports under that Act shall be provided the opportunity to file reports at the same time for purposes of both Acts.

(4) Any household that fails to submit periodic reports required by paragraph (1) shall not receive an allotment for the payment period to which the unsubmitted report applies until such report is submitted.

(5) The Secretary is authorized, upon the request of a State agency, to waive any provisions of this subsection (except the provisions of the first sentence of paragraph (1) which relate to households which are not required to file periodic reports) to the extent necessary to permit the State agency to establish periodic reporting requirements for purposes of this Act which are similar to the periodic reporting requirements established under the State plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in that State.

(d)(1) Unless otherwise exempted by the provisions of paragraph (d)(2) of this subsection, (A) no person shall be eligible to participate in the food stamp program who is[73] physically and mentally fit person between the ages of sixteen[74] and sixty who (i) refuses at the time of application and once every twelve months thereafter to register for employment in a manner determined by the Secretary; (ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under paragraph (4), including any reasonable employment requirements as are prescribed by the State agency in accordance with paragraph (4), and the period of ineligibility shall be two months;[75] (iii)[76] refuses without good cause (including the lack of adequate child care for children above the age of five and under the age of twelve) to accept an offer of employment at a wage not less than the higher of either the applicable State or Federal minimum wage, or 80 per centum of the wage that would have governed had the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), been applicable to the offer of employment, and at a site or plant not then subject to a strike or lockout; and (B) no household shall be eligible to participate in the food stamp program (i) if the head of the household is a physically and mentally fit person between the ages of sixteen and sixty and such individual refuses to do any of those acts described in clause (A) of this sentence, or (ii) if the head of the household voluntarily quits any job without good cause, but, in such case, the period of ineligibility shall be ninety days[77]. An employee of the Federal Government, or of a State or political subdivision of a State, who engaged in a strike against the Federal Government, a State or political subdivision of a State and is dismissed from his job because of his participation in the strike shall be considered to have voluntarily quit such job without good cause. Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated.[78] If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to sanction for such violation and, if it is otherwise eligible, may resume participation in the food stamp program, but any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility.[79]

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under title IV of the Social Security Act, as amended (42 U.S.C. 602), or the Federal-State

---

[72] P.L. 98-204, §6, struck out "The reporting requirements contained in paragraph (1) of this subsection shall be the sole such requirements for reporting changes in circumstances for participating households." and substituted this sentence.

[73] P.L. 99-198, §1516(1)(A), struck out "no household shall be eligible for assistance under this Act if it includes a" and substituted "(A) no person shall be eligible to participate in the food stamp program who is". As in original. Possibly should reinstate "a".

[74] P.L. 99-198, §1516(1)(B), struck out "eighteen" and substituted "sixteen".

[75] P.L. 99-198, §1517(a)(1), amended clause (ii) in its entirety.

[76] P.L. 99-198, §1516(1)(C), struck out "is head of the household and voluntarily quits any job without good cause: *Provided*, That the period of ineligibility shall be ninety days; or (iv)".

[77] P.L. 99-198, §1516(1)(D), inserted "; and" and subparagraph (B).

[78] P.L. 99-198, §1516(2), added this sentence.

[79] See footnote 78.

unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject that is comparable to a requirement of paragraph (1) shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program;[80] (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis[81].

(3) Notwithstanding any other provision of law, a household shall not participate in the food stamp program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 501(2) of the Labor Management Relations Act, 1947, because of a labor dispute (other than a lockout) as defined in section 2(9) of the National Labor Relations Act: *Provided*, That a household shall not lose its eligibility to participate in the food stamp program as a result of one of its members going on strike if the household was eligible for food stamps immediately prior to such strike, however, such household shall not receive an increased allotment as the result of a decrease in the income of the striking member or members of the household: *Provided further*, That such ineligibility shall not apply to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout.

(4)(A) Not later than April 1, 1987, each State agency shall implement an employment and training program designed by the State agency and approved by the Secretary for the purpose of assisting members of households participating in the food stamp program in gaining skills, training, or experience that will increase their ability to obtain regular employment.

(B) For purposes of this Act, an "employment and training program" means a program that contains one or more of the following components:

(i) Job search programs with terms and conditions comparable to those prescribed in subparagraphs (A) and (B) of section 402(a)(35) of part A of title IV of the Social Security Act, except that the State agency shall have no obligation to incur costs exceeding $25 per participant per month, as provided in subparagraph (B)(vi), and the State agency shall retain the option to apply employment requirements prescribed under this clause to program applicants at the time of application.

(ii) Job search training programs that include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs, determined by the State agency to expand the job search abilities or employability of those subject to the program.

(iii) Workfare programs operated under section 20.

(iv) Programs designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. An employment or training experience program established under this clause shall—

(I) limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care;

(II) to the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(III) not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

---

[80] P.L. 99-198, §1516(3)(A), struck out "or".
[81] P.L. 99-198, §1516(3)(B), added subparagraph (F).

(IV) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) As approved by the Secretary, other programs, projects, and experiments, such as a supported work program, aimed an[82] accomplishing the purpose of the employment and training program.

(C) The State agency may provide that participation in an employment and training program may supplement or supplant other employment-related requirements imposed on those subject to the program.

(D)(i) Each State agency may exempt from any requirement for participation in any program under this paragraph categories of household members to which the application of such participation requirement is impracticable as applied to such categories due to factors such as the availability of work opportunities and the cost-effectiveness of the employment requirements. In making such a determination, the State agency may designate a category consisting of all such household members residing in a specific area of the State. Each State may exempt, with the approval of the Secretary, members of households that have participated in the food stamp program 30 days or less.

(ii) Each State agency may exempt from any requirement for participation individual household members not included in any category designated as exempt under clause (i) but with respect to whom such participation is impracticable because of personal circumstances such as lack of job readiness and employability, the remote location of work opportunities, and unavailability of child care.

(iii) Any exemption of a category or individual under this subparagraph shall be periodically evaluated to determine whether, on the basis of the factors used to make a determination under clauses (i) or (ii), the exemption continues to be valid. Such evaluations shall occur no less often than at each certification or recertification in the case of exemptions under clause (ii).

(E) Each State agency shall establish requirements for participation by individuals not exempt under subparagraph (D) in one or more employment and training programs under this paragraph, including the extent to which any individual is required to participate. Such requirements may vary among participants.

(F)(i) The total hours of work in an employment and training program carried out under this paragraph required of members of a household, together with the hours of work of such members in any program carried out under section 20, in any month collectively may not exceed a number of hours equal to the household's allotment for such month divided by the higher of the applicable State minimum wage or Federal minimum hourly rate under the Fair Labor Standards Act of 1938.

(ii) The total hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in another program carried out under section 20 and any hours worked for compensation (in cash or in kind) in any other capacity, shall not exceed one hundred and twenty hours per month.

(G)(i) The State agency may operate any program component under this paragraph in which individuals elect to participate.

(ii) The State agency shall permit, to the extent it determines practicable, individuals not subject to requirements imposed under subparagraph (E) or who have complied, or are in the process of complying, with such requirements to participate in any program under this paragraph.

(H) The State agency shall reimburse participants in programs carried out under this paragraph, including those participating under subparagraph (G), for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in the program, except that the State agency may limit such reimbursement to each participant to $25 per month.

(I) The Secretary shall promulgate guidelines that (i) enable State agencies, to the maximum extent practicable, to design and operate an employment and training program that is compatible and consistent with similar programs operated within the State, and (ii) ensure, to the maximum extent practicable, that employment and training programs are provided for Indians on reservations.

(J)(i) For any fiscal year, the Secretary shall establish performance standards for each State that, in the case of persons who are subject to employment requirements under this section and who are not exempt under subparagraph (D), designate the minimum percentages (not to exceed 50 percent through September 30, 1989) of such persons that State agencies shall place in programs under this paragraph. Such standards need not be uniform for all the States, but may vary among the several States. The Secretary shall consider the cost to the States in setting performance standards and the degree of participation in programs under this paragraph by exempt persons.

---

[82] As in original.

(ii) In making any determination as to whether a State agency has met a performance standard under clause (i), the Secretary shall—

(I) consider the extent to which persons have elected to participate in programs under this paragraph;

(II) consider such factors as placement in unsubsidized employment, increases in earnings, and reduction in the number of persons participating in the food stamp program; and

(III) consider other factors determined by the Secretary to be related to employment and training.

(iii) The Secretary shall vary the performance standards established under clause (i) according to differences in the characteristics of persons required to participate and the type of program to which the standard is applied.

(iv) The Secretary may delay establishing performance standards for up to 18 months after national implementation of the provisions of this paragraph, in order to base performance standards on State agency experience in implementing this paragraph.

(K)(i) The Secretary shall ensure that State agencies comply with the requirements of this paragraph and section 11(e)(22).

(ii) If the Secretary determines that a State agency has failed, without good cause, to comply with such a requirement, including any failure to meet a performance standard under subparagraph (J), the Secretary may withhold from such State, in accordance with section 16(a), (c), and (h), such funds as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14.

(L) The facilities of the State public employment offices and agencies operating programs under the Job Training Partnership Act may be used to find employment and training opportunities for household members under the programs under this paragraph.[83]

(e) No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household if he or she (1) is physically and mentally fit and is between the ages of eighteen and sixty, (2) is enrolled at least half time in an institution of higher education, or is an individual who is not assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act,[84] and (3)(A) is not employed a minimum of twenty hours per week or does not participate in a federally financed work study program during the regular school year; (B) is not a parent with responsibility for the care of a dependent child under age six; (C) is not a parent with responsibility for the care of a dependent child above the age of five and under the age of twelve for whom adequate child care is not available; (D) is not receiving aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or (E) is not so enrolled as a result of participation in the work incentive program under title IV of the Social Security Act, as amended (42 U.S.C. 602).

(f) No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 8 U.S.C. 1101(a)(20)), excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; or (C) an alien who entered the United States prior to June 30, 1948[85], or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (8 U.S.C. 1259); or (D) an alien who has qualified for conditional entry pursuant to sections 207 and 208[86] of the Immigration and Nationality Act (8 U.S.C 1157 and 1158[87] [88]; or (E) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergency reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)); or (F) an alien within the United States as to whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act (8 U.S.C. 1253(h)) [89]. No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the food stamp program as a member of any household. The income (less a pro rata share) and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member.

---

[83] P.L. 99-198, §1517(a)(2), added paragraph (4).

[84] P.L. 99-198, §1516(4), inserted "or is an individual who is not assigned to or placed in an institution of higher learning through a program under the Job Training Partnerhip Act,".

[85] P.L. 99-603, §203(a), amended 8 U.S.C. 1259 by striking out "June 30, 1948" and substituting "January 1, 1972".

[86] P.L. 99-198, §1516(5)(A), struck out "section 203(a)(7)" and substituted "sections 207 and 208".

[87] P.L. 99-198, §1516(5)(A), struck out "(8 U.S.C. 1153(a)(7))" and substituted "(8 U.S.C. 1157 and 1158)".

[88] P.L. 99-198, §1516(5)(B), struck out "because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity".

(g) No individual who receives supplemental security income benefits under title XVI of the Social Security Act, State supplementary payments described in section 1616 of such Act, or payments of the type referred to in section 212(a) of Public Law 93-66, as amended, shall be considered to be a member of a household for any month, if, for such month, such individual resides in a State which provides State supplementary payments (1) of the type described in section 1616(a) of the Social Security Act and section 212(a) of Public Law 93-66, and (2) the level of which has been found by the Secretary of Health and Human Services to have been specifically increased so as to include the bonus value of food stamps.

(h) No household that knowingly transfers assets for the purpose of qualifying or attempting to qualify for the food stamp program shall be eligible to participate in the program for a period of up to one year from the date of discovery of the transfer.

ISSUANCE AND USE OF COUPONS

SEC. 7. [7 U.S.C.2016] (a) Coupons shall be printed under such arrangements and in such denominations as may be determined by the Secretary to be necessary, and shall be issued only to households which have been duly certified as eligible to participate in the food stamp program.

(b) Coupons issued to eligible households shall be used by them only to purchase food in retail food stores which have been approved for participation in the food stamp program at prices prevailing in such stores: *Provided*, That nothing in this Act shall be construed as authorizing the Secretary to specify the prices at which food may be sold by wholesale food concerns or retail food stores: *Provided further*, That eligible households using coupons to purchase food may receive cash in change therefor so long as the cash received does not equal or exceed the value of the lowest coupon denomination issued.

(c) Coupons issued to eligible households shall be simple in design and shall include only such words or illustrations as are required to explain their purpose and define their denomination. The name of any public official shall not appear on such coupons.

(d) The Secretary shall develop an appropriate procedure for determining and monitoring the level of coupon inventories in the hands of coupon issuers for the purpose of providing that such inventories are at proper levels (taking into consideration the historical and projected volume of coupon distribution by such issuers). Such procedures shall provide that coupon inventories in the hands of such issuers are not in excess of the reasonable needs of such issuers taking into consideration the ease with which such coupon inventories may be resupplied. The Secretary shall require each coupon issuer at intervals prescribed by the Secretary, but not less often than monthly, to send to the Secretary or the Secretary's designee, which may include the State agency, a written report of the issuer's operations during such period. In addition to other information deemed by the Secretary to be appropriate, the Secretary shall require that the report contain an oath, or affirmation, signed by the coupon issuer, or in the case of a corporation or other entity not a natural person, by an appropriate official of the coupon issuer, certifying that the information contained in the report is true and correct to the best of such person's knowledge and belief.

(e) The Secretary shall prescribe appropriate procedures for the delivery of coupons to coupon issuers and for the subsequent controls to be placed over such coupons by coupon issuers in order to ensure adequate accountability.

(f) Notwithstanding any other provision of this Act, the State agency shall be strictly liable to the Secretary for any financial losses involved in the acceptance, storage and issuance of coupons, including any losses involving failure of a coupon issuer to comply with the requirements specified in section 11(e)(20), except that in the case of losses resulting from the issuance and replacement of authorizations for coupons and allotments which are sent through the mail, the State agency shall be liable to the Secretary to the extent prescribed in the regulations promulgated by the Secretary.

---

[89] P.L. 99-198, §1516(5)(C), struck out "because of the judgment of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion".

(g)(1) If the Secretary determines, in consultation with the Inspector General of the Department of Agriculture, that it would improve the integrity of the food stamp program, the Secretary shall[90] require a State agency—

(A) to issue or deliver coupons using alternative methods, including an automatic data processing and information retrieval system; or

(B) to issue, in lieu of coupons, reusable documents to be used as part of an automatic data processing and information retrieval system and to be presented by, and returned to, recipients at retail food stores for the purpose of purchasing food.

(2) The cost of documents or systems that may be required pursuant to this subsection may not be imposed upon a retail food store participating in the food stamp program.

(h)(1) The State agency may implement a procedure for staggering the issuance of coupons to eligible households throughout the entire month: *Provided*, That the procedure ensures that, in the transition period from other issuance procedures, no eligible household experiences an interval between coupon issuances of more than 40 days, either through regular issuances by the State agency or through supplemental issuances.

(2) For any eligible household that applies for participation in the food stamp program during the last fifteen days of a month and is issued benefits within that period, coupons shall be issued for the first full month of participation by the eighth day of the first full month of participation.[91]

VALUE OF ALLOTMENT

SEC. 8. [7 U.S.C. 2017] (a) The value of the allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be equal to the cost to such households of the thrifty food plan reduced by an amount equal to 30 per centum of the household's income, as determined in accordance with section 5(d) and (e) of this Act, rounded to the nearest lower whole dollar: *Provided*, That for households of one and two persons the minimum allotment shall be $10 per month.

(b) The value of the allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of an allotment under this Act.

(c) The value of the allotment issued to any eligible household for the initial month or other initial period for which an allotment is issued shall have a value which bears the same ratio to the value of the allotment for a full month or other initial period for which the allotment is issued as the number of days (from the date of application) remaining in the month or other initial period for which the allotment is issued bears to the total number of days in the month or other initial period for which the allotment is issued, except that no allotment may be issued to a household for the initial month or period if the value of the allotment which such household would otherwise be eligible to receive under this subsection is less than $10. As used in this subsection, the term "initial month" means (1) the first month for which an allotment is issued to a household, and (2) the first month for which an allotment is issued to a household following any period which such household was not participating in the food stamp program under this Act after previous participation in such program.

(d) A household against which a penalty has been imposed for an intentional failure to comply with a Federal, State, or local law relating to welfare or a public assistance program may not, for the duration of the penalty, receive an increased allotment as the result of a decrease in the household's income (as determined under sections 5(d) and 5(e)) to the extent that the decrease is the result of such penalty.

(e)(1) The Secretary may permit not more than five statewide projects (upon the request of a State) and not more than five projects in political subdivisions of States (upon the request of a State or political subdivision) to operate a program under which a household shall be considered to have satisfied the application requirements prescribed under section 5(a) and the income and resource requirements prescribed under subsections (d) through (g) of section 5 if such household—

(A) includes one or more members who are recipients of—

(i) aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

---

[90] P.L. 99-198, §1519, struck out "may" and substituted "shall".
[91] P.L. 99-198, §1518, added subsection (h).

(ii) supplemental security income under title XVI of such Act (42 U.S.C. 1381 et seq.); or

(iii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(B) has an income that does not exceed the applicable income standard of eligibility described in section 5(c).

(2) Except as provided in paragraph (3), a State or political subdivision that elects to operate a program under this subsection shall base the value of an allotment provided to a household under subsection (a) on—

(A)(i) the size of the household; and

(ii)(I) benefits paid to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act; or

(II) the income standard of eligibility for medical assistance under title XIX of such Act; or

(B) at the option of the State or political subdivision, the standard of need for such size household under the programs referred to in clause (A)(ii).

(3) The Secretary shall adjust the value of allotments received by households under a program operated under this subsection to ensure that the average allotment by household size for households participating in such program and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment that would have been provided under this Act but for the operation of this subsection, for each category of households, respectively, in a State or political subdivision, for any period during which such program is in operation.

(4) The Secretary shall evaluate the impact of programs operated under this subsection on recipient households, administrative costs, and error rates.

(5) The administrative costs of such programs shall be shared in accordance with section 16.

(6) In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such programs, the processing of applications for, and determinations of eligibility to receive, food stamp benefits are simplified and are unified with the processing of applications for, and determinations of eligibility to receive, benefits under such titles of the Social Security Act (42 U.S.C. 601 et seq.).[92]

APPROVAL OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 9. [7 U.S.C. 2018] (a) Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem coupons under the food stamp program and for the approval of those applicants whose participation will effectuate the purposes of the food stamp program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (1) the nature and extent of the food business conducted by the applicant; (2) the volume of coupon business which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; and (3) the business integrity and reputation of the applicant. Approval of an applicant shall be evidenced by the issuance to such applicant of a nontransferable certificate of approval.

(b)(1)[93] No wholesale food concern may be authorized to accept and redeem coupons unless the Secretary determines that its participation is required for the effective and efficient operation of the food stamp program. In addition, no firm may be authorized to accept and redeem coupons as both a retail food store and as a wholesale food concern at the same time.

(2)(A) A buyer or transferee (other than a bona fide buyer or transferee) of a retail food store or wholesale food concern that has been disqualified under section 12(a) may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(B) A buyer or transferee may not, as a result of the sale or transfer of such store or concern, be required to furnish a bond under section 12(d).[94]

(c) Regulations issued pursuant to this Act shall require an applicant retail food store or wholesale food concern to submit information which will permit a determination to be made as to whether such applicant qualifies, or continues to qualify, for approval under the provisions of this Act or the regulations issued pursuant to this

---

[92] P.L. 99-198, §1520, added subsection (e).
[93] P.L. 99-198, §1532(b)(1), inserted "(1)".
[94] P.L. 99-198, §1532(b)(2), added paragraph (2).

Act. Regulations issued pursuant to this Act shall provide for safeguards which limit the use or disclosure of information obtained under the authority granted by this subsection to purposes directly connected with administration and enforcement of the provisions of this Act or the regulations issued pursuant to this Act, except that such information may be disclosed to and used by State agencies that administer the special supplemental food program for women, infants and children, authorized under section 17 of the Child Nutrition Act of 1966, for purposes of administering the provisions of that Act and the regulations issued under that Act[95]. Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

(d) Any retail food store or wholesale food concern which has failed upon application to receive approval to participate in the food stamp program may obtain a hearing on such refusal as provided in section 14 of this Act.

(e) Approved retail food stores shall display a sign providing information on how persons may report abuses they have observed in the operation of the food stamp program.

(f) In those areas in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the operation of house-to-house trade routes damages the program's integrity, the Secretary shall limit the participation of house-to-house trade routes to those routes that are reasonably necessary to provide adequate access to households.

(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.[96]

REDEMPTION OF COUPONS[97]

SEC. 10. [7 U.S.C. 2019] Regulations issued pursuant to this Act shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or which are insured under the Federal Credit Union Act and have retail food stores or wholesale food concerns in their field of membership[98], with the cooperation of the Treasury Department, except that retail food stores defined in section 3(k)(4) of this Act shall be authorized to redeem their members' food coupons prior to receipt by the members of the food so purchased, and publicly operated community mental health centers or[99] private nonprofit organizations or institutions which serve meals to narcotics addicts or alcoholics in drug addiction or alcoholic treatment and rehabilitation programs, public and private nonprofit shelters that prepare and serve meals for battered women and children,[100] public or private nonprofit group living arrangements that serve meals to disabled or blind residents, and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses[101] shall not be authorized to redeem coupons through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the Federal Credit Union Act[102]. No financial institution may impose on or collect from a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, other than any requirements relating to cancellation of coupons, for the presentation of coupons by financial institutions to the Federal Reserve banks.[103]

---

[95] P.L. 99-198, §1521, inserted ", except that such information may be disclosed to and used by State agencies that administer the special supplemental food program for women, infants and children, authorized under section 17 of the Child Nutrition Act of 1966, for purposes of administering the provisions of that Act and the regulations issued under that Act".

[96] P.L. 99-570, §11002(d), added subsection (g), effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[97] P.L. 99-88, 99 Stat. 297, provided that notwithstanding any other provision of law, the provisions of this section, as amended, concerning private, nonprofit drug addiction or alcohol treatment and rehabilitation programs, shall henceforth also be applicable to publicly operated community health centers.

[98] P.L. 99-198, §1522(1), inserted ", or which are insured under the Federal Credit Union Act and have retail food stores or wholesale food concerns in their field of membership".

[99] P.L. 99-198, §1501(b), inserted "publicly operated community mental health centers or".

[100] P.L. 99-570, §11002(e)(1), struck out "and".

[101] P.L. 99-570, §11002(e)(2), inserted ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[102] P.L. 99-198, §1522(2), inserted "or the Federal Credit Union Act".

[103] P.L. 99-198, §1523(a), added this sentence.

ADMINISTRATION

SEC. 11. [7 U.S.C. 2020] (a) The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance of coupons and the control and accountability thereof. There shall be kept such records as may be necessary to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for such period of time, not less than three years, as may be specified in the regulations issued pursuant to this Act.

[(b) Stricken.[104]]

(c) In the certification of applicant households for the food stamp program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political beliefs.

(d) The State agency (as defined in section 3(n)(1) of this Act) of each State desiring to participate in the food stamp program shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State in every political subdivision. The Secretary may not, as a part of the approval process for a plan of operation, require a State to submit for prior approval by the Secretary the State agency instructions to staff, interpretations of existing policy, State agency methods of administration, forms used by the State agency, or any materials, documents, memoranda, bulletins, or other matter, unless the State determines that the materials, documents, memoranda, bulletins, or other matter alter or amend the State plan of operation or conflict with the rights and levels of benefits to which a household is entitled. In the case of all or part of an Indian reservation, the State agency as defined in section 3(n)(1) of this Act shall be responsible for conducting such program on such reservation unless the Secretary determines that the State agency (as defined in section 3(n)(1) of this Act) is failing, subsequent to the enactment of this Act, properly to administer such program on such reservation in accordance with the purposes of this Act and further determines that the State agency as defined in section 3(n)(2) of this Act is capable of effectively and efficiently conducting such program, in light of the distance of the reservation from State agency-operated certification and issuance centers, the previous experience of such tribal organization in the operation of programs authorized under the Indian Self-Determination Act (25 U.S.C. 450) and similar Acts of Congress, the tribal organization's management and fiscal capabilities, and the adequacy of measures taken by the tribal organization to ensure that there shall be no discrimination in the operation of the program on the basis of race, color, sex, or national origin, in which event such State agency shall be responsible for conducting such program and submitting for approval a plan of operation specifying the manner in which such program will be conducted. The Secretary, upon the request of a tribal organization, shall provide the designees of such organization with appropriate training and technical assistance to enable them to qualify as expeditiously as possible as a State agency pursuant to section 3(n)(2) of this Act. A State agency, as defined in section 3(n)(1) of this Act, before it submits its plan of operation to the Secretary for the administration of the food stamp program on all or part of an Indian reservation, shall consult in good faith with the tribal organization about that portion of the State's plan of operation pertaining to the implementation of the program for members of the tribe, and shall implement the program in a manner that is responsive to the needs of the Indians on the reservation as determined by ongoing consultation with the tribal organization.

(e) The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

(1) that the State agency shall (A) not conduct food stamp outreach activities with funds provided under this Act; and (B) use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English;

(2) that each household which contacts a food stamp office in person during office hours to make what may reasonably be interpreted as an oral or written request for food stamp assistance shall receive and shall be permitted to file, on the same day that such contact is first made, a simplified, uniform national application form for participation in the food stamp program designed by the Secretary, unless the Secretary approves a deviation from that form by a particular State agency because of the use by that agency of a dual public assistance food stamp application form pursuant to subsection (i) of this section, the requirements of an agency's computer system, or other exigencies as determined by the Secretary. Each application form shall contain a description in

---

[104] P.L. 97-98, §1316, 95 Stat. 1286.

understandable terms in prominent and boldface lettering of the appropriate civil and criminal provisions dealing with violations of this Act, including the penalties therefor, by members of an eligible household. Each application shall also contain in understandable terms and in prominent and boldface lettering a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subjected to criminal prosecution for knowingly providing incorrect information. The State agency shall comply with the standards established by the Secretary for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person at a certification office or through a representative pursuant to paragraph (7) of this subsection, so that such persons may have an adequate opportunity to be certified properly;[105] One adult member of a household that is applying for a coupon allotment shall be required to certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment.[106] The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses.[107] In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.[108]

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification[109] of income other than that determined to be excluded by section 5(d) of this Act (in part through the use of the information, if any, obtained under section 16(e) of this Act), household size (in any case such size is questionable),[110] and such other eligibility factors as the Secretary determines to be necessary to implement sections 5 and 6 of this Act, although the State agency may verify prior to certification, whether questionable or not, the size of any applicant household and such other eligibility factors as the State agency determines are necessary[111], so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application;

(4) that the State agency shall insure that each participating household receive a notice of expiration of its certification prior to the start of the last month of its certification period advising the household that it must submit a new application in order to renew its eligibility for a new certification period and, further, that each such household which seeks to be certified another time or more times thereafter by filing an application for such recertification no later than fifteen days prior to the day upon which its existing certification period expires shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment issued to it pursuant to its prior certification, but if such household is found to be ineligible or to be eligible for a smaller allotment during the new certification period it shall not continue to participate and receive benefits on the basis authorized for the preceding certification period even if it makes a timely request for a fair hearing pursuant to paragraph (10) of this subsection: *Provided*, That the timeliness standards for submitting the notice of expiration and filing an application for recertification may be modified by the Secretary in light of sections 5(f)(2) and 6(c) of this Act if administratively necessary;

(5) the specific standards to be used in determining the eligibility of applicant households which shall be in accordance with sections 5 and 6 of this Act and shall include no additional requirements imposed by the State agency;

(6) that (A) the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this Act; (B) the State agency personnel

---

[104] As in original. Possibly should be a period.

[105] P.L. 99-198, §1525, added this sentence.

P.L. 99-198, §1529(1), struck out the semicolon and substituted a period.

[107] P.L. 99-198, §1529(2), added this sentence.

[108] See footnote 107.

[109] P.L. 99-198, §1527(1), struck out "only".

[110] P.L. 99-198, §1527(2), inserted ", household size (in any case such size is questionable),".

[111] P.L. 99-198, §1527(3), struck out "any factors of eligibility involving households that fall within the State agency's error-prone household profiles as developed by the State agency from the error rate reduction system conducted under section 16 of this Act and as approved by the Secretary" and substituted "such other eligibility factors as the State agency determines are necessary".

utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the United States Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis; and (C) the State agency shall undertake to provide a continuing, comprehensive program of training for all personnel undertaking such certification;

(7) that an applicant household may be represented in the certification process and that an eligible household may be represented in coupon issuance or food purchase by a person other than a member of the household so long as that person has been clearly designated as the representative of that household for that purpose by the head of the household or the spouse of the head, and, where the certification process is concerned, the representative is an adult who is sufficiently aware of relevant household circumstances, except that the Secretary may restrict the number of households which may be represented by an individual and otherwise establish criteria and verification standards for representation under this paragraph;

(8) safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this Act, regulations issued pursuant to this Act, Federal assistance programs, or federally assisted State programs, except that (A) such safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law, and (B) notwithstanding any other provision of law, all information obtained under this Act from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act or any regulation issued under this Act;

(9) that the State agency shall—

(A) provide coupons no later than five days after the date of application to any household which—

(i)(I) has gross income that is less than $150 per month; or

(II) is a destitute migrant or a seasonal farmworker household in accordance with the regulations governing such households in effect July 1, 1982; and

(ii) has liquid resources that do not exceed $100; and

(B) to the extent practicable, verify the income and liquid resources of the household prior to issuance of coupons to the household;

(10) for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under any provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance: *Provided*, That any household which timely requests such a fair hearing after receiving individual notice of agency action reducing or terminating its benefis within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier, except that in any case in which the State agency receives from the household a written statement containing information that clearly requires a reduction or termination of the household's benefits, the State agency may act immediately to reduce or terminate the household's benefits and may provide notice of its action to the household as late as the date on which the action becomes effective;

(11) upon receipt of a request from a household, for the prompt restoration in the form of coupons to a household of any allotment or portion thereof which has been wrongfully denied or terminated, except that allotments shall not be restored for any period of time more than one year prior to the date the State agency receives a request for such restoration from a household or the State agency is notified or otherwise discovers that a loss to a household has occurred;

(12) for the submission of such reports and other information as from time to time may be required by the Secretary;

(13) for indicators of expected performance in the administration of the program;

(14) that the State agency shall prominently display in all food stamp and public assistance offices posters prepared or obtained by the Secretary describing the information contained in subparagraphs (A) through (D) of this paragraph and

shall make available in such offices for home use pamphlets prepared or obtained by the Secretary listing (A) foods that contain substantial amounts of recommended daily allowances of vitamins, minerals, and protein for children and adults; (B) menus that combine such foods into meals; (C) details on eligibility for other programs administered by the Secretary that provide nutrition benefits; and (D) general information on the relationship between health and diet;

(15) that the State agency shall specify a plan of operation for providing food stamps for households that are victims of a disaster; that such plan shall include, but not be limited to, procedures for informing the public about the disaster program and how to apply for its benefits, coordination with Federal and private disaster relief agencies and local government officials, application procedures to reduce hardship and inconvenience and deter fraud, and instruction of caseworkers in procedures for implementing and operating the disaster program.[112]

(16) that the State agency shall require each household certified as eligible to participate by methods other than the out-of-office methods specified in the fourth[113] sentence of paragraph (2) of this subsection in those project areas or parts of project areas in which the Secretary, in consultation with the Department's Inspector General, finds that it would be useful to protect the program's integrity and would be cost effective[114], to present a photographic identification card when using its authorization card in order to receive its coupons.[115] The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;[116]

(17) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act;

(18) at the option of the State agency, for the establishment and operation of an automatic data processing and information retrieval system that meets such conditions as the Secretary may prescribe and that is designed to provide efficient and effective administration of the food stamp program;

(19) that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act shall be requested and utilized by the State agency (described in section 3(n)(1) of this Act) to the extent permitted under the provisions of section 303(d) of the Social Security Act;[117]

(20) that, in project areas or parts thereof where authorization cards are used, and eligible households are required to present photographic identification cards in order to receive their coupons, the State agency shall include, in any agreement or contract with a coupon issuer, a provision that (A) the issuer shall (i) require the presenter to furnish a photographic identification card at the time the authorization card is presented, and (ii) record on the authorization card the identification number shown on the photographic identification card; and (B) if the State agency determines that the authorization card has been stolen or otherwise was not received by a household certified as eligible, the issuer shall be liable to the State agency for the face value of any coupons issued in the transaction in which such card is used and the issuer fails to comply with the requirements of clause (A) of this paragraph;[118]

(21) that the State agency shall establish a system and take action on a periodic basis to verify and otherwise assure that an individual does not receive coupons in more than one jurisdiction within the State; and[119]

(22) the plans of the State agency for carrying out employment and training programs under section 6(d)(4), including the nature and extent of such programs, the geographic areas and households to be covered under such program, and the basis, including any cost information, for exemptions of categories and individuals

---

[112] As in original. Period should possibly be a semicolon.

[113] P.L. 99-198, §1528(1), struck out "last" and substituted "fourth".

[114] P.L. 99-198, §1528(2), inserted "and would be cost effective".

[115] P.L. 99-198, §1528(3), struck out the semicolon and substituted a period.

[116] P.L. 99-198, §1528(4), added this sentence.

[117] P.L. 98-369, §2651(i), amended paragraph (19) in its entirety.

[118] P.L. 99-198, §1517(b)(1), struck out "and".

[119] P.L. 99-198, §1517(b)(2), struck out the period and substituted "; and". As in original. Possibly should strike "and".

and for the choice of employment and training program components reflected in the plans.[120]

(23) in a project area in which 5,000 or more households participate in the food stamp program, for the establishment and operation of a unit for the detection of fraud in the food stamp program, including the investigation, and assistance in the prosecution, of such fraud; and [121]

(24) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 13(c).[122]

(f) To encourage the purchase of nutritious foods, the Secretary is authorized to extend food and nutrition education to reach food stamp program participants, using the methods and techniques developed in the expanded food and nutrition education and other programs. State agencies shall encourage food stamp program participatants to participate in the expanded food and nutrition education program conducted under section 3(d) of the Act of May 8, 1914 (7 U.S.C. 343(d)), commonly known as the Smith-Lever Act and any program established under sections 1584 through 1588 of the Food Security Act of 1985.[123] At the request of personnel of such education program, State agencies, wherever practicable, shall allow personnel and information materials of such education program to be place in food stamp offices.[124]

(g) If the Secretary determines, upon information received by the Secretary, investigation initiated by the Secretary, or investigation that the Secretary shall initiate upon receiving sufficient information evidencing a pattern of lack of compliance by a State agency of a type specified in this subsection, that in the administration of the food stamp program there is a failure by a State agency without good cause to comply with any of the provisions of this Act, the regulations issued pursuant to this Act, the State plan of operation submitted pursuant to subsection (d) of this section, the State plan for automated data processing submitted pursuant to subsection (o)(2) of this section,[125] or the Secretary's standards for the efficient and effective administration of the program established under section 16(b)(1) of this Act the Secretary shall immediately inform such State agency of such failure and shall allow the State agency a specified period of time for the correction of such failure. If the State agency does not correct such failure within that specified period, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance forthwith by the State agency and, upon suit by the Attorney General in an appropriate district court of the United States having jurisdiction of the geographic area in which the State agency is located and a showing that noncompliance has occurred, appropriate injunctive relief shall issue, and, whether or not the Secretary refers such matter to the Attorney General, the Secretary shall proceed to withhold from the State such funds authorized under sections 16(a), 16(c), and 16(g)[126] of this Act as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14 of this Act.

(h) If the Secretary determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any coupon or coupons issued as a result of such negligence or fraud.

(i) Notwithstanding any other provision of law, the Secretary and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program under part A of title IV of the Social Security Act; (2) households in which all members are applicants for or[127] recipients of supplemental security income shall be informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program[128] at the social security office and be certified for eligibility utilizing information contained in files of the Social Security Administration; (3) households in which all members are included in a federally aided public assistance or State or local general assistance grant shall have their application for participation in the food stamp program contained in the public assistance or general assistance application form; and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance or general assistance, shall be certified for participation in the food stamp program based on information in the public assistance or general assistance case file to the extent that reasonably verified information is available in such case file. Each State agency shall implement clauses (1) and (2) and may implement clause (3) or (4), or both such clauses. No household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 5(a) and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.[129]

---

[120] P.L. 99-198, §1517(b)(3), added paragraph (22). As in original. Possibly should be a semicolon.

[121] P.L. 99-198, §1526, added paragraph (23).

[122] P.L. 99-198, §1535(b)(1), added paragraph (24).

[123] P.L. 99-198, §1530, added this sentence.

[124] See footnote 123.

[125] P.L. 99-198, §1537(c)(1), inserted "the State plan for automated data processing submitted pursuant to subsection (o)(2) of this section,".

[126] P.L. 99-198, §1537(c)(2), struck out "and 16(c)" and substituted ", 16(c), and 16(g)".

[127] P.L. 99-198, §1531(a)(1), inserted "applicants for or".

[128] P.L. 99-198, §1531(a)(2), struck out "permitted to apply for participation in the food stamp program by executing a simple application" and substituted "informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program".

(j)(1) Any individual who is an applicant for or recipient of social security benefits (under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services) shall be informed of the availability of benefits under the food stamp program and informed of the availability of a simple application to participate in such program at the social security office.

(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on the date of enactment of the Food Security Act of 1985, regarding services to be provided in social security offices under this subsection and subsection (i), in a manner to ensure that—

(A) applicants for and recipients of social security benefits are adequately notified in social security offices that assistance may be available to them under this Act;

(B) applications for assistance under this Act from households in which all members are applicants for or recipients of supplemental security income will be forwarded immediately to the State agency in an efficient and timely manner; and

(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to provide such services.[130]

(k) Subject to the approval of the President, post offices in all or part of the State may issue, upon request by the State agency, food stamps to eligible households.

(l) Whenever the ratio of a State's average food stamp participation in any quarter of a fiscal year to the State's total population in that quarter (estimated on the basis of the latest available population estimates as provided by the Department of Commerce, Bureau of the Census, Series P-25, Current Population Reports (or its successor series)) exceeds 60 per centum, the Office of the Inspector General of the Department of Agriculture shall immediately schedule a financial audit review of a sample of project areas within that State, and shall, upon completion of the audit, provide a report to Congress of its findings and recommendations within one hundred and eighty days. Any financial audit review subsequent to the first such review, required under the preceding sentence, shall be conducted at the option of the Office of the Inspector General.

(m) The Secretary shall provide for the use of fee agents in rural Alaska. As used in this subsection "fee agent" means a paid agent who, although not a State employee, is authorized by the State to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(n) The Secretary shall require State agencies to conduct verification and implement other measures where necessary, but no less often than annually, to assure that an individual does not receive both coupons and benefits or payments referred to in section 6(g) or both coupons and assistance provided in lieu of coupons under section 17(b)(1).

(o)(1) The Secretary shall develop, after consultation with, and with the assistance of, an advisory group of State agencies appointed by the Secretary without regard to the provisions of the Federal Advisory Committee Act, a model plan for the comprehensive automation of data processing and computerization of information systems under the food stamp program. The plan shall be developed and made available for public comment through publication of the proposed plan in the Federal Register not later than October 1, 1986. The Secretary shall complete the plan, taking into consideration public comments received, not later than February 1, 1987. The elements of the plan may include intake procedures, eligibility determinations and calculation of benefits, verification procedures, coordination with related Federal and State programs, the issuance of benefits, reconciliation procedures, the generation of notices, and program reporting. In developing the plan, the Secretary shall take into account automated data processing and information systems already in existence in States and shall provide for consistency with such systems.

---

[129] P.L. 99-198, §1507(b), added this sentence.

[130] P.L. 99-198, §1531(b), amended subsection (j) in its entirety.

(2) Not later than October 1, 1987, each State agency shall develop and submit to the Secretary for approval a plan for the use of an automated data processing and information retrieval system to administer the food stamp program in such State. The State plan shall take into consideration the model plan developed by the Secretary under paragraph (1) and shall provide time frames for completion of various phases of the State plan. If a State agency already has a sufficient automated data processing and information retrieval system, the State plan may, subject to the Secretary's approval, reflect the existing State system.

(3) Not later than April 1, 1988, the Secretary shall prepare and submit to Congress an evaluation of the degree and sufficiency of each State's automated data processing and computerized information systems for the administration of the food stamp program, including State plans submitted under paragraph (2). Such report shall include an analysis of additional steps needed for States to achieve effective and cost-efficient data processing and information systems. The Secretary, thereafter, shall periodically update such report.

(4) Based on the Secretary's findings in such report submitted under paragraph (3), the Secretary may require a State agency, as necessary to rectify identified shortcomings in the administration of the food stamp program in the State, except where such direction would displace State initiatives already under way, to take specified steps to automate data processing systems or computerize information systems for the administration of the food stamp program in the State if the Secretary finds that, in the absence of such systems, there will be program accountability or integrity problems that will substantially affect the administration of the food stamp program in the State.

(5)(A) Subject to subparagraph (B), in the case of a plan for an automated data processing and information retrieval system submitted by a State agency to the Secretary under paragraph (2), such State agency shall—

(i) commence implementation of its plan not later than October 1, 1988; and

(ii) meet the time frames set forth in the plan.

(B) The Secretary shall extend a deadline imposed under subparagraph (A) to the extent the Secretary deems appropriate based on the Secretary's finding of a good faith effort of a State agency to implement its plan in accordance with subparagraph (A).[131]

CIVIL MONEY PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 12. [7 U.S.C. 2021] (a) Any approved retail food store or wholesale food concern may be disqualified for a specified period of time from further participation in the food stamp program, or subjected to a civil money penalty of up to $10,000 for each violation if the Secretary determines that its disqualification would cause hardship to food stamp households, on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this Act or the regulations issued pursuant to this Act.

(b) Disqualification under subsection (a) shall be—

(1) for a reasonable period of time, of no less than six months nor more than five years, upon the first occasion of disqualification;

(2) for a reasonable period of time, of no less than twelve months nor more than ten years, upon the second occasion of disqualification; and

(3) permanent upon the third occasion of disqualification or the first occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern.

(c) The action of disqualification or the imposition of a civil money penalty shall be subject to review as provided in section 14 of this Act.

(d) As a condition of authorization to accept and redeem coupons, the Secretary may require a retail food store or wholesale food concern which has been disqualified or subjected to a civil penalty pursuant to subsection (a) to furnish a bond to cover the value of coupons which such store or concern may in the future accept and redeem in violation of this Act. The Secretary shall, by regulation, prescribe the amount, terms, and conditions of such bond. If the Secretary finds that such store or concern has accepted and redeemed coupons in violation of this Act after furnishing such bond, such store or concern shall forfeit to the Secretary an amount of such bond which is equal to the value of coupons accepted and redeemed by such store or concern in violation of this Act. Such store or concern may obtain a hearing on such forfeiture pursuant to section 14.

---

[131] P.L. 99-198, §1537(b), added subsection (o).

(e)(1) In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil money penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil money penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this subsection.

(2) At any time after a civil money penalty imposed under paragraph (1) has become final under the provisions of section 14(a), the Secretary may request the Attorney General to institute a civil action against the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business to collect the penalty and such court shall have jurisdiction to hear and decide such action. In such action, the validity and amount of such penalty shall not be subject to review.[132]

COLLECTION AND DISPOSITION OF CLAIMS

SEC. 13. [7 U.S.C. 2022] (a)(1)[133] The Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under the provisions of this Act or the regulations issued pursuant to this Act, including, but not limited to, claims arising from fraudulent and nonfraudulent overissuances to recipients, including the power to waive claims if the Secretary determines that to do so would serve the purposes of this Act. Such powers with respect to claims against recipients may be delegated by the Secretary to State agencies. The Secretary shall have the power to reduce amounts otherwise due to a State agency under section 16 of this Act to collect unpaid claims assessed against the State agency if the State agency has declined or exhausted its appeal rights under section 14 of this Act.

(2) Each adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.[134]

(b)(1)(A) In the case of any ineligibility determination under section 6(b) of this Act, the household of which such ineligible individual is a member is required to agree to a reduction in the allotment of the household of which such individual is a member, or payment in cash, in accordance with a schedule determined by the Secretary, that will be sufficient to reimburse the Federal Government for the value of any overissuance of coupons resulting from the activity that was the basis of the ineligibility determination. If a household refuses to make an election within thirty days of a demand for an election, or elects to make a payment in cash under the provisions of the preceding sentence and fails to do so, the household shall be subject to an allotment reduction.

(B) State agencies shall[135] collect any claim against a household arising from the over issuance of coupons based on an ineligibility determination under section 6(b), other than claims collected pursuant to subparagraph (A), by using other means of collection, unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective[136].

(2)(A) State agencies shall collect any claim against a household arising from the overissuance of coupons, other than claims the collection of which is provided for in paragraph (1) of this subsection and claims arising from an error of the State agency, by reducing the monthly allotments of the household. These collections shall be limited to 10 per centum of the monthly allotment (or $10 per month, whenever that would result in a faster collection rate).

(B) State agencies may collect any claim against a household arising from the overissuance of coupons, other than claims collected pursuant to paragraph (1) or subparagraph (A), by using other means of collection.

---

[132] P.L. 99-198, §1532(a), added subsection (e).

[133] P.L. 99-198, §1533(1), inserted "(1)".

[134] P.L. 99-198, §1533(2), added paragraph (2).

[135] P.L. 99-198, §1534(1), struck out "may" and substituted "shall".

[136] P.L. 99-198, §1534(2), inserted ", unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective".

(c)(1) As used in this subsection, the term "uncollected overissuance" means the amount of an overissuance of coupons, as determined under subsection (b)(1), that has not been recovered pursuant to subsection (b)(1).

(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)), whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

(3) A State agency may recover an uncollected overissuance—

(A) by—

(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.[137]

ADMINISTRATIVE AND JUDICIAL REVIEW

SEC. 14. [7 U.S.C. 2023] (a) Whenever an application of a retail food store or wholesale food concern to participate in the food stamp program is denied pursuant to section 9 of this Act, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 12 of this Act, or a retail food store or wholesale food concern forfeits a bond under section 12(d) of this Act, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 13 of this Act, or a claim against a State agency is stated pursuant to the provisions of section 13 of this Act, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved. Such notice shall be delivered by certified mail or personal service. If such store, concern, or State agency is aggrieved by such action, it may, in accordance with regulations promulgated under this Act, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final. If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Secretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination. If the store, concern, or State agency feels aggrieved by such final determination, it may obtain judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination. The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process. The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence. During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and remain in full force and effect, unless on[138] application to the court on not less than ten days' notice, and after hearing thereon and a consideration by the court of the applicant's likelihood of prevailing on the merits and[139] of irreparable injury, the court temporarily stays such administrative action pending disposition of such trial or appeal.

---

[137] P.L. 99-198, §1535(a), added subsection (c).

[138] P.L. 99-198, §1536(1), struck out "an" and substituted "on".

[139] P.L. 99-198, §1536(2), struck out "showing" and substituted "consideration by the court of the applicant's likelihood of prevailing on the merits and".

(b) In any judicial action arising under this Act, any food stamp allotments found to have been wrongfully withheld shall be restored only for periods of not more than one year prior to the date of the commencement of such action, or in the case of an action seeking review of a final State agency determination, not more than one year prior to the date of the filing of a request with the State for the restoration of such allotments or, in either case, not more than one year prior to the date the State agency is notified or otherwise discovers the possible loss to a household.

VIOLATIONS AND ENFORCEMENT

SEC. 15. [7 U.S.C. 2024] (a) Notwithstanding any other provision of this Act, the Secretary may provide for the issuance or presentment for redemption of coupons to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States or to ensure enforcement of the provisions of this Act or the regulations issued pursuant to this Act.

(b)(1) Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of a value of $100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) In the case of any individual convicted of an offense under paragraph (1) of this subsection, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $10,000, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(d) Coupons issued pursuant to this Act shall be deemed to be obligations of the United States within the meaning of section 8 of title 18, United States Code.

(e) Any coupon issuer or any officer, employee, or agent thereof convicted of failing to provide the report required under section 7(d) of this Act or of violating the regulations issued under section 7(d) and (e) of this Act shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(f) Any coupon issuer or any officer, employee, or agent thereof convicted of knowingly providing false information in the report required under section 7(d) of this Act shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(g) The Secretary may subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for coupons or authorization cards in any manner not authorized by this Act or the regulations issued under this Act. Any forfeiture and disposal of property forfeited under this subsection shall be conducted in accordance with procedures contained in regulations issued by the Secretary.

ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. [7 U.S.C. 2025] (a) The Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency's operation of the food stamp program, which costs shall include, but not be limited to, the cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of coupons after their delivery to receiving points within the State, (3) the issuance of coupons to all eligible households, and (4) fair hearings: *Provided*, That the Secretary is authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further authorized at the Secretary's discretion to pay any State agency administering the food stamp program on all or part of an Indian reservation under section 11(d) of this Act such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the food stamp program, as well as to permit each State to retain 50 per centum of the value of all funds or allotments recovered or collected pursuant to subsections (b)(1) and (c) of section 13[140] and 25 per centum of the value of all funds or allotments recovered or collected pursuant to section 13(b)(2) of this Act, except the value of funds or allotments recovered or collected pursuant to section 13(b)(2) which arise from an error of a State agency. The officials responsible for making determinations of ineligibility under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) The Secretary shall (1) establish standards for the efficient and effective administration of the food stamp program by the States, including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program,[141] and (2) instruct each State to submit, at regular intervals, reports which shall specify the specific administrative actions proposed to be taken and implemented in order to meet the efficiency and effectiveness standards established pursuant to clause (1) of this subsection.

(c) The Secretary is authorized to adjust a State agency's federally funded share of administrative costs pursuant to subsection (a), other than the costs already shared in excess of 50 per centum under the proviso in the first sentence of subsection (a) or under subsection (g), by increasing such share to 60 per centum of all such administrative costs in the case of a State agency which has—

(1) a payment error rate as defined in subsection (d)(1) which, when added to the total percentage of all allotments underissued to eligible households by the State agency, is less than 5 per centum; and

(2) a rate of invalid decisions in denying eligibility which is less than a nationwide percentage which the Secretary determines to be reasonable.

(d)(1) As used in this subsection, the term "payment error rate" means the total pecentage of all allotments issued in a fiscal year by a State agency which are either—

(A) issued to households which fail to meet basic program eligibility requirements; or

(B) overissued to eligible households.

(2)(A) The Secretary shall institute an error rate reduction program under which, if a State agency's payment error rate exceeds—

(i) 9 per centum for fiscal year 1983,

(ii) 7 per centum for fiscal year 1984, or

(iii) 5 per centum for fiscal year 1985 or any fiscal year thereafter,

then the Secretary shall, other than for good cause shown or as provided in subparagraph (B), reduce the State agency's federally funded share of administrative costs provided pursuant to subsection (a), other than the costs already shared in excess of 50 per centum under the proviso in the first sentence of subsection (a) or under subsection (g), by the amounts required under paragraph (3) less any amount payable as a result of the use by the State agency of correctly processed information received from an automatic information exchange system made available by any Federal department or agency[142].

---

[140] P.L. 99-198, §1535(c)(1), struck out "section 13(b)(1) of this Act" and substituted "subsections (b)(1) and (c) of section 13".

[141] P.L. 99-198, §1524, inserted ", including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program,".

(B) The Secretary may not reduce a State agency's federally funded share of administrative costs pursuant to subparagraph (A)—

(i) on the basis of the State agency's payment error rate for fiscal year 1983, if such payment error rate represents a reduction from the State agency's payment error rate for the period beginning on October 1, 1980, and ending on March 31, 1981, of at least 33.3 per centum of the difference between the State agency's payment error rate for such period and 5 per centum; or

(ii) on the basis of the State agency's payment error rate for fiscal year 1984, if such payment error rate represents a reduction from the State agency's payment error rate for the period beginning on October 1, 1980, and ending on March 31, 1981, of at least 66.7 per centum of the difference between the State agency's payment error rate for such period and 5 per centum.

(3)(A) The Secretary shall reduce a State agency's federally funded share of administrative costs, except as provided in subparagraph (B), by—

(i) 5 per centum for each per centum or fraction thereof that the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2); and

(ii) if the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2) by more than 3 per centum, an additional 5 per centum (for a total of 10 per centum) for each per centum or fraction thereof that the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2) by more than 3 per centum.

(B) The Secretary may not reduce a State agency's federally funded share of administrative costs for a fiscal year by an amount that exceeds the product of multiplying—

(i) the per centum by which the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2); by

(ii) the total dollar value of all coupons issued by the State agency during the fiscal year.

(4) The Secretary may require a State agency to report any factors which the Secretary considers necessary to determine the appropriate level of a State agency's federally funded share of administrative costs under this subsection. If a State agency fails to meet the reporting requirements established by the Secretary, the Secretary shall base the determination on all pertinent information available to the Secretary.

(5) If the Secretary reduces a State agency's federally funded share of administrative costs under this subsection, the State may seek administrative and judicial review of the action pursuant to section 14.

(6) To facilitate the implementation of paragraphs (2) and (3), each State agency shall submit to the Secretary expeditiously data regarding its operations in each fiscal year sufficient for the Secretary to establish the payment error rate for the State agency for such fiscal year and determine the amount for which the State agency will be liable for such fiscal year under paragraphs (2) and (3). The Secretary shall make a determination for a fiscal year, and notify the State agency of such determination, within nine months following the end of each fiscal year. The Secretary shall initiate efforts to collect the amount owed by the State agency as a claim established under paragraphs (2) and (3) for a fiscal year, subject to the conclusion of any formal or informal appeal procedure and administrative or judicial review under section 14 (as provided for in paragraph (5)), before the end of the fiscal year following such fiscal year.[143]

(e) The Secretary and State agencies shall (1) require, as a condition of eligibility for participation in the food stamp program, that each household member furnish to the State agency their social security account number (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program. The Secretary and State agencies shall have access to the information regarding individual food stamp program applicants and participants who receive benefits under title XVI of the Social Security Act that has been provided to the Secretary of Health and Human Services, but only to the extent that the Secretary and the Secretary of Health and Human Services determine necessary for purposes of determining or auditing a household's eligibility to receive assistance or the amount thereof under the food stamp program, or verifying information related thereto.

---

[142] P.L. 99-198, §1537(a)(1), inserted "less any amount payable as a result of the use by the State agency of correctly processed information received from an automatic information exchange system made available by any Federal department or agency".

[143] P.L. 99-198, §1537(a)(2), added paragraph (6).

(f) Notwithstanding any other provision of law, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of officers and employees of the Department of Agriculture may be paid in judicial or administrative proceedings to which such officers and employees have been made parties and that arise directly out of their performance of duties under this Act.

(g) Effective October 1, 1980, the Secretary is authorized to pay to each State agency an amount equal to—

75 per centum of the costs incurred by the State agency in the planning, design, development, or installation of automatic data processing and information retrieval systems that the Secretary determines (1) will assist in meeting the requirements of this Act, (2) meet such conditions as the Secretary prescribes, (3) are likely to provide more efficient and effective administration of the food stamp program, and (4) will be compatible with other such systems used in the administration of State plans under the Aid to Families with Dependent Children Program under title IV of the Social Security Act: *Provided*, That there shall be no such payments to the extent that a State agency is reimbursed for such costs under any other Federal program or uses such systems for purposes not connected with the food stamp program: *Provided further*, That any costs matched under this subsection shall be excluded in determining the State agency's administrative costs under any other subsection of this section.

(h)(1) The Secretary shall allocate among the State agencies in each fiscal year, from funds appropriated for such fiscal year under section 18(a)(1), the amount of $40,000,000 for the fiscal year ending September 30, 1986, $50,000,000 for the fiscal year ending September 30, 1987, $60,000,000 for the fiscal year ending September 30, 1988, and $75,000,000 for each of the fiscal years ending September 30, 1989 and September 30, 1990, to carry out the employment and training program under section 6(d)(4), except as provided in paragraph (3), during such fiscal year.

(2) If, in carrying out such program during such fiscal year, a State agency incurs costs that exceed the amount allocated to the State agency under paragraph (1), the Secretary shall pay such State agency an amount equal to 50 per centum of such additional costs, subject to the first limitation in paragraph (3).

(3) The Secretary shall also reimburse each State agency in an amount equal to 50 per centum of the total amount of payments made or costs incurred by the State agency in connection with transportation costs and other expenses reasonably necessary and directly related to participation in an employment and training program under section 6(d)(4), except that such total amount shall not exceed an amount representing $25 per participant per month and such reimbursement shall not be made out of funds allocated under paragraph (1).

(4) Funds provided to a State agency under this subsection may be used only for operating an employment and training program under section 6(d)(4), and may not be used for carrying out other provisions of the Act.

(5)(A) The Secretary shall monitor the employment and training programs carried out by State agencies under section 6(d)(4) to measure their effectiveness in terms of the increase in the numbers of household members who obtain employment and the numbers of such members who retain such employment as a result of their participation in such employment and training programs.

(B) The Secretary shall, not later than January 1, 1989, report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of such employment and training programs.[144]

(i)(1) The Department of Agriculture may use quality control information made available under this section to determine which project areas have payment error rates (as defined in subsection (d)(1)) that impair the integrity of the food stamp program.

(2) The Secretary may require a State agency to carry out new or modified procedures for the certification of households in areas identified under paragraph (1) if the Secretary determines such procedures would improve the integrity of the food stamp program and be cost effective.

(3) Not later than 12 months after the date of enactment of the Food Security Act of 1985, and each 12 months thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that lists project areas identified under paragraph (1) and describes any procedures required to be carried out under paragraph (2).[145]

(h)[146] The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.[147]

---

[144] P.L. 99-198, §1517(c), added subsection (h).
[145] P.L. 99-198, §1539, added subsection (i).
[146] As in original. Possibly should be "(j)".

RESEARCH, DEMONSTRATION, AND EVALUATIONS

SEC. 17. [7 U.S.C. 2026] (a) The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition-related benefits.

(b)(1) The Secretary may conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households, including projects involving the payment of the value of allotments or the average value of allotments by household size in the form of cash to eligible households all of whose members are age sixty-five or over or any of whose members are entitled to supplemental security income benefits under title XVI of the Social Security Act or to aid to families with dependent children under part A of title IV of the Social Security Act, the use of countersigned food coupons or similar identification mechanisms that do not invade a household's privacy, and the use of food checks or other voucher-type forms in place of food coupons. The Secretary may waive the requirements of this Act to the degree necessary for such projects to be conducted, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households, shall be implemented which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act. Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act shall be continued through October 1, 1990[148], if the State so requests.

(2) The Secretary shall, jointly with the Secretary of Labor, implement two pilot projects involving the performance of work in return for food stamp benefits in each of the seven administrative regions of the Food and Nutrition Service of the Department of Agriculture, such projects to be (A) appropriately divided in each region between locations that are urban and rural in characteristics and among location selected to provide a representative cross-section of political subdivisions in the States and (B) submitted for approval prior to project implementation, together with the names of the agencies or organizations that will be engaged in such projects, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. Under such pilot projects, any person who is subject to the work registration requirements pursuant to section 6(d) of this Act, and is a member of a household that does not have earned income equal to or exceeding the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, shall be ineligible to participate in the food stamp program as a member of any household during any month in which such person refuses, after not being offered employment in the private sector of the economy for more than thirty days (ten days in at least one pilot project area designated by the Secretary) after the initial registration for employment referred to in section 6(d)(1)(i) of this Act, to accept an offer of employment from a political subdivision or a prime sponsor pursuant to the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812), for which employment compensation shall be paid in the form of the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, with each hour of employment entitling the household to a portion of the allotment equal in value to 100 per centum of the Federal minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)); which employment shall not, together with any other hours worked in any other capacity by such person exceed forty hours a week; and which employment shall not be used by the employer to fill a job opening created by the action of such employer in laying off or terminating the employment of any regular employee not supported under this paragraph in anticipation of filling the vacancy so created by hiring an employee or employees to be supported under this paragraph: *Provided,* That all of the political subdivision's or prime sponsor's public service jobs supported under the Comprehensive Employment and Training Act of

---

[147] P.L. 99-603, §121(b)(5), added this subsection.

[148] P.L. 99-114, §4, struck out "until October 1, 1985" and substituted "through November 15, 1985".
P.L. 99-157, §2, struck out "November 15" and substituted "December 13".
P.L. 99-182, §2, struck out "December 13" and substituted "December 31".
P.L. 99-198, §1540(a), struck out "December 31, 1985" and substituted "October 1, 1990".

1973, as amended (29 U.S.C. 812), are filled before such subdivision or sponsor can extend a job offer pursuant to this paragraph: *Provided further,* That the sponsor of each such project shall provide the assurances required of prime sponsors under section 205(c)(7), (8), (15), (19), and (24) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 845(c)), and the Secretary shall require such sponsors to comply with the conditions contained in sections 208(a)(1), (4), and (5) and (c) and 703(4) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 848(a) and (c) and 983). The Secretary and the Secretary of Labor shall jointly issue reports to the appropriate committees of Congress on the progress of such pilot projects no later than six and twelve months following enactment of this Act, shall issue interim reports no later than October 1, 1979, October 1, 1980, and March 30, 1981, shall issue a final report describing the results of such pilot projects based upon their operation from their commencement through the fiscal year ending September 30, 1981, and shall pay to the agencies or organizations operating such pilot projects 50 per centum of all administrative costs involved in such operation.

(c) The Secretary shall develop and implement measures for evaluating, on an annual or more frequent basis, the effectiveness of the food stamp program in achieving its stated objectives, including, but not limited to, the program's impact upon the nutritional and economic status of participating households, the program's impact upon all sectors of the agricultural economy, including farmers and ranchers, as well as retail food stores, and the program's relative fairness to households of different income levels, different age composition, different size, and different regions of residence. Further, the Secretary shall, by way of making contracts with or grants to public or private organizations or agencies, implement pilot programs to test various means of measuring on a continuing basis the nutritional status of low income people, with special emphasis on people who are eligible for food stamps, in order to develop minimum common criteria and methods for systematic nutrition monitoring that could be applied on a nationwide basis. The locations of the pilot programs shall be selected to provide a representative geographic and demographic cross-section of political subdivisions that reflect natural usage patterns of health and nutritional services and that contain high proportions of low income people. The Secretary shall report on the progress of these pilot programs on an annual basis commencing on July 1, 1982, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, together with such recommendations as the Secretary deems appropriate.

(d)[149] (1) As used in this subsection, the term "qualification period" means a period of time immediately preceding—

(A) in the case of a new applicant for benefits under this Act, the date on which application for such benefits is made by the individual; or

(B) in the case of an otherwise continuing recipient of coupons under this Act, the date on which such coupons would otherwise be issued to the individual.

(2) Upon application of a State or political subdivision thereof, the Secretary may conduct one pilot project involving the employment requirements described in this subsection in each of four project areas selected by the Secretary.

(3) Under the pilot projects conducted pursuant to this subsection, except as provided in paragraphs (4), (5), and (6), an individual who resides in a project area shall not be eligible for assistance under this Act if the individual was not employed a minimum of twenty hours per week, or did not participate in a workfare program established under section 20, during a qualification period of—

(A) thirty or more consecutive days, in the case of an individual whose benefits under a State or Federal unemployment compensation law were terminated immediately before such qualification period began; or

(B) sixty or more consecutive days, in the case of an individual not described in clause (A).

(4) The provisions of paragraph (3) shall not apply in the case of an individual who—

(A) is under eighteen or over fifty-nine years of age;

(B) is certified by a physician as physically or mentally unfit for employment;

(C) is a parent or other member of a household with responsibility for the care of a dependent child under six years of age or of an incapacitated person;

(D) is a parent or other caretaker of a child under six years of age in a household in which there is another parent who, unless covered by clause (A) or (B), or both such clauses, is employed a minimum of twenty hours per week or participating in a workfare program established under section 20;

(E) is in compliance with section 6(d) and demonstrates, in a manner prescribed by the Secretary, that the individual is able and willing to accept employment but is unable to obtain such employment; or

---

[149] P.L. 99-198, §1540(b), repealed subsection (d).
P.L. 99-198, §1540(c), redesignated the former subsection (e) as subsection (d).

(F) is a member of any other group described by the Secretary.

(5) The Secretary may waive the requirements of paragraph (3) in the case of all individuals within all or part of a project area if the Secretary finds that such area—

(A) has an unemployment rate of over 10 per centum; or

(B) does not have a sufficient number of jobs to provide employment for individuals subject to this subsection.

(6) An individual who has become ineligible for assistance under this Act by reason of paragraph (3) may reestablish eligibility for assistance after a period of ineligibility by—

(1) becoming employed for a minimum of twenty hours per week during any consecutive thirty-day period; or

(2) participating in a workfare program established under section 20 during any consecutive thirty-day period.

(e)[150] The Secretary shall conduct a study of the effects of reductions made in benefits provided under this Act pursuant to part 1 of subtitle A of title I of the Omnibus Budget Reconciliation Act of 1981, the Food Stamp and Commodity Distribution Amendments of 1981, the Food Stamp Act Amendments of 1982, and any other laws enacted by the Ninety-seventh Congress which affect the food stamp program. The study shall include a study of the effect of retrospective accounting and periodic reporting procedures established under such Acts, including the impact on benefit and administrative costs and on error rates and the degree to which eligible households are denied food stamp benefits for failure to file complete periodic reports. The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report on the results of such study no later than February 1, 1984, and a final report on the results of such study no later than March 1, 1985.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. [7 U.S.C. 2027] (a)(1) To carry out the provisions of this Act, there are hereby authorized to be appropriated not in excess of $5,847,600,000 for the fiscal year ending September 30, 1978; not in excess of $6,778,900,000 for the fiscal year ending September 30, 1979; not in excess of $9,491,000,000 for the fiscal year ending September 30, 1980; not in excess of $11,480,000,000 for the fiscal year ending September 30, 1981; not in excess of $11,300,000,000 for the fiscal year ending September 30, 1982; not in excess of $12,874,000,000 for the fiscal year ending September 30, 1983; not in excess of $13,145,000,000 for the fiscal year ending September 30, 1984; and not in excess of $13,933,000,000 for the fiscal year ending September 30, 1985. To carry out the provisions of this Act, there are hereby authorized to be appropriated not in excess of $13,037,000,000 for the fiscal year ending September 30, 1986; not in excess of $13,936,000,000 for the fiscal year ending September 30, 1987; not in excess of $14,741,000,000 for the fiscal year ending September 30, 1988; not in excess of $15,435,000,000 for the fiscal year ending September 30, 1989; and not in excess of $15,970,000,000 for the fiscal year ending September 30, 1990.[151] Not to exceed one-fourth of 1 per centum of the previous year's appropriation is authorized in each such fiscal year to carry out the provisions of section 17 of this Act. The Secretary shall, by the fifteenth day of each month, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the Secretary's best estimate of the second preceding month's expenditure, including administrative costs, as well as the cumulative totals for the fiscal year. In each monthly report, the Secretary shall also state whether there is reason to believe that reductions in the value of allotments issued to households certified to participate in the food stamp program will be necessary under subsection (b) of this section.

(2) No funds authorized to be appropriated under this Act or any other Act of Congress shall be used by any person, firm, corporation, group, or organization at any time, directly or indirectly, to interfere with or impede the implementation of any provision of this Act or any rule, regulation, or project thereunder, except that this limitation shall not apply to the provision of legal and related assistance in connection with any proceeding or action before any State or Federal agency or court. The President shall ensure that this paragraph is complied with by such order or other means as the President deems appropriate.

(b) In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year. Notwithstanding any other provision of this Act, if in any fiscal year the Secretary finds that the requirements of participating States will exceed the appropriation amount authorized in subsection (a)(1),[152] the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection.

---

[150] P.L. 99-198, §1540(c), redesignated subsection (f) as subsection (e).

[151] P.L. 99-198, §1541(1), inserted this sentence.

(c) In prescribing the manner in which allotments will be reduced under subsection (b) of this section, the Secretary shall ensure that such reductions reflect, to the maximum extent practicable, the ratio of household income, determined under sections 5(d) and 5(e) of this Act, to the income standards of eligibility, for households of equal size, determined under section 5(c) of this Act. The Secretary may, in prescribing the manner in which allotments will be reduced, establish (1) special provisions applicable to persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise disabled, and (2) minimum allotments after any reductions are otherwise determined under this section.

(d) Not later than sixty days after the issuance of a report under subsection (a) of this section in which the Secretary expresses the belief that reductions in the value of allotments to be issued to households certified to participate in the food stamp program will be necessary, the Secretary shall take the requisite action to reduce allotments in accordance with the requirements of this section. Not later than seven days after the Secretary takes any action to reduce allotments under this section, the Secretary shall furnish the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a statement setting forth (1) the basis of the Secretary's determination, (2) the manner in which the allotments will be reduced, and (3) the action that has been taken by the Secretary to reduce the allotments.

(e) Funds collected from claims against households or State agencies, including claims collected pursuant to sections 7(f), 11(g) and (h), subsections (b) and (c) of section 13[153], claims resulting from resolution of audit findings, and claims collected from households receiving overissuances, shall be credited to the food stamp program appropriation account for the fiscal year in which the collection occurs. Funds provided to State agencies under section 16(c) of this Act shall be paid from the appropriation account for the fiscal year in which the funds are provided.

(f) No funds appropriated to carry out this Act may be transferred to the Office of the Inspector General, or the Office of the General Counsel, of the Department of Agriculture.[154]

BLOCK GRANT

SEC. 19. [7 U.S.C. 2028] (a)(1)(A) From the sums appropriated under this Act the Secretary shall, subject to the provisions of this subsection and subsection (b), pay to the Commonwealth of Puerto Rico not to exceed $825,000,000 for the fiscal year ending September 30, 1986, $852,750,000 for the fiscal year ending September 30, 1987, $879,750,000 for the fiscal year ending September 30, 1988, $908,250,000 for the fiscal year ending September 30, 1989, and $936,750,000 for the fiscal year ending September 30, 1990,[155] to finance 100 per centum of the expenditures for[156] food assistance provided to needy persons, and 50 per centum of the administrative expenses related to the provision of such assistance.

(B) The payments to the Commonwealth for any fiscal year shall not exceed the expenditures by that jurisdiction during that year for the provision of the assistance the provision of which is included in the plan of the Commonwealth approved under subsection (b) and 50 per centum of the related administrative expenses.

(2) The Secretary shall, subject to the provisions of subsection (b), pay to the Commonwealth for the applicable fiscal year, at such times and in such manner as the

---

[152] P.L. 99-198, §1541(2), struck out "limitation set herein," and substituted "appropriation amount authorized in subsection (a)(1),".

[153] P.L. 99-198, §1535(c)(2), struck out "section 13(b) of this Act" and substituted "subsections (b) and (c) of section 13". Executed as if §1535(c)(2), struck out "13(b) of this Act".

[154] P.L. 99-198, §1542(a), added subsection (f).

[155] P.L. 99-198, §1543(1), struck out "each fiscal year" and substituted "the fiscal year ending September 30, 1986, $852,750,000 for the fiscal year ending September 30, 1987, $879,750,000 for the fiscal year ending September 30, 1988, $908,250,000 for the fiscal year ending September 30, 1989, and $936,750,000 for the fiscal year ending September 30, 1990,".

[156] P.L. 98-204, §1, struck out "noncash", effective for the period beginning January 1, 1984, and ending September 30, 1985.

P.L. 99-114, §2, struck out "noncash", effective for the period beginning October 1, 1985, and ending November 15, 1985.

P.L. 99-157, §3, struck out "noncash", effective for the period beginning November 16, 1985, and ending December 13, 1985.

P.L. 99-182, §3, struck out "noncash", effective for the period beginning December 14, 1985, and ending December 31, 1985.

P.L. 99-198, §1543(2), struck out "noncash", effective December 23, 1985.

Secretary may determine, the amount estimated by the Commonwealth pursuant to subsection (b)(1)(A)(iv), reduced or increased to the extent of any prior overpayment or current underpayment which the Secretary determines has been made under this section and with respect to which adjustment has not already been made under this subsection.

(b)(1)(A) In order to receive payments under this Act for any fiscal year, the Commonwealth shall have a plan for that fiscal year approved by the Secretary under this section. By July 1 of each year, if the Commonwealth wishes to receive payments, it shall submit a plan for the provision of the assistance described in subsection (a)(1)(A) for the following fiscal year which—

(i) designates the agency or agencies directly.[157] responsible for the administration, or supervision of the administration, of the program for the provision of such assistance;

(ii) assesses the food and nutrition needs of needy persons residing in the Commonwealth;

(iii) describes the program for the provision of such assistance, including the assistance to be provided and the persons to whom such assistance will be provided, and any agencies designated to provide such assistance, which program must meet such requirements as the Secretary may by regulation prescribe for the purpose of assuring that assistance is provided to the most needy persons in the jurisdiction;

(iv) estimates the amount of expenditures necessary for the provision of the assistance described in the program and related administrative expenses, up to the amount provided for payment by subsection (a)(1)(A); and

(v) includes such other information as the Secretary may require.

(B)(i) The Secretary shall approve or disapprove any plan submitted pursuant to subparagraph (A) no later than August 1 of the year in which it is submitted. The Secretary shall approve any plan which complies with the requirements of subparagraph (A). If a plan is disapproved because it does not comply with any of the requirements of that paragraph the Secretary shall, except as provided in subparagraph (B)(ii), notify the appropriate agency in the Commonwealth that payments will not be made to it under subsection (a) for the fiscal year to which the plan applies until the Secretary is satisfied that there is no longer any such failure to comply, and until the Secretary is so satisfied, the Secretary will make no payments.

(ii) The Secretary may suspend the denial of payments under subparagraph (B)(i) for such period as the Secretary determines appropriate and instead withhold payments provided for under subsection (a), in whole or in part, for the fiscal year to which the plan applies, until the Secretary is satisfied that there is no longer any failure to comply with the requirements of subparagraph (A), at which time such withheld payments shall be paid.

(2)(A) The Commonwealth shall provide for a biennial audit of expenditures under its program for the provision of the assistance described in subsection (a)(1)(A), and within 120 days of the end of each fiscal year in which the audit is made, shall report to the Secretary the findings of such audit.

(B) Within 120 days of the end of the fiscal year, the Commonwealth shall provide the Secretary with a statement as to whether the payments received under subsection (a) for that fiscal year exceeded the expenditures by it during that year for which payment is authorized under this section, and if so, by how much, and such other information as the Secretary may require.

(C)(i) If the Secretary finds that there is a substantial failure by the Commonwealth to comply with any of the requirements of subparagraphs (A) and (B), or to comply with the requirements of subsection (b)(1)(A) in the administration of a plan approved under subsection (b)(1)(B), the Secretary shall, except as provided in subparagraph (C)(ii), notify the appropriate agency in the Commonwealth that further payments will not be made to it under subsection (a) until the Secretary is satisfied that there will no longer be any such failure to comply, and until the Secretary is so satisfied, the Secretary shall make no further payments.

(ii) The Secretary may suspend the termination of payments under subparagraph (C)(i) for such period as the Secretary determines appropriate, and instead withhold payments provided for under subsection (a), in whole or in part, until the Secretary is satisfied that there will no longer be any failure to comply with the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), at which time such withheld payments shall be paid.

(iii) Upon a finding under subparagraph (C)(i) of a substantial failure to comply with any of the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), the

---

[157] P.L. 99-198, §1543(3), struck out "a single agency which shall be" and substituted "the agency or agencies directly". As in original. Period should be stricken.

Secretary may, in addition to or in lieu of any action taken under subparagraphs (C)(i) and (C)(ii), refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the Commonwealth of Puerto Rico, and upon suit by the Attorney General in an appropriate district court of the United States and a showing that noncompliance has occurred, appropriate injunctive relief shall issue.

(c)(1) The Secretary shall provide for the review of the programs for the provision of the assistance described in subsection (a)(1)(A) for which payments are made under this Act.

(2) The Secretary is authorized as the Secretary deems practicable to provide technical assistance with respect to the programs for the provision of the assistance described in subsection (a)(1)(A).

(d) Whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property provided or financed under this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both, but if the value of the funds, assets or property involved is not over $200, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both.

WORKFARE

SEC. 20. [7 U.S.C. 2029] (a)(1) The Secretary shall permit any political subdivision, in any State, that applies and submits a plan to the Secretary in compliance with guidelines promulgated by the Secretary to operate a workfare program pursuant to which every member of a household participating in the food stamp program who is not exempt by virtue of the provisions of subsection (b) of this section shall accept an offer from such subdivision to perform work on its behalf, or may seek an offer to perform work, in return for compensation consisting of the allotment to which the household is entitled under section 8(a) of this Act, with each hour of such work entitling that household to a portion of its allotment equal in value to 100 per centum of the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938.

(2)(A) The Secretary shall promulgate guidelines pursuant to paragraph (1) which, to the maximum extent practicable, enable a political subdivision to design and operate a workfare program under this section which is compatible and consistent with similar workfare programs operated by the subdivision.

(B) A political subdivision may comply with the requirements of this section by operating—

(i) a workfare program pursuant to title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) any other workfare program which the Secretary determines meets the provisions and protections provided under this section.

(b)(1) A household member shall be exempt from workfare requirements imposed under this section if such member is—

(A) exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2);

(B) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program required under title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(C) mentally or physically unfit;

(D) under sixteen years of age;

(E) sixty years of age or older; or

(F) a parent or other caretaker of a child in a household in which another member is subject to the requirements of this section or is employed fulltime.

(2)(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the maximum number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month; by

(ii) the higher of the Federal or State minimum wage in effect for such month.

(B) In no event may any such member be required to participate in such program more than 120 hours per month.

(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.[158]

(c) No operating agency shall require any participating member to work in any workfare position to the extent that such work exceeds in value the allotment to which the household is otherwise entitled or that such work, when added to any other hours worked during such week by such member for compensation (in cash or in kind) in any other capacity, exceeds thirty hours a week.

(d) The operating agency shall—

(1) not provide any work that has the effect of replacing or preventing the employment of an individual not participating in the workfare program;

(2) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours; and

(3) reimburse participants for actual costs of transportation and other actual costs all of which are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month.

(e) The operating agency may allow a job search period, prior to making workfare assignments, of up to thirty days following a determination of eligibility.

(f) In the event that any person fails to comply with the requirements of this section, neither that person nor the household to which that person belongs shall be eligible to participate in the food stamp program for two months, unless that person or another person in the household satisfies all outstanding workfare obligations prior to the end of the two-month disqualification period.

(g)(1) The Secretary shall pay to each operating agency 50 per centum of all administrative expenses incurred by such agency in operating a workfare program, including reimbursements to participants for work-related expenses as described in subsection (d)(3) of this section.

(2)(A) From 50 per centum of the funds saved from employment related to a workfare program operated under this section, the Secretary shall pay to each operating agency an amount not to exceed the administrative expenses described in paragraph (1) for which no reimbursement is provided under such paragraph.

(B) For purposes of subparagraph (A), the term "funds saved from employment related to a workfare program operated under this section" means an amount equal to three times the dollar value of the decrease in allotments issued to households, to the extent that such decrease results from wages received by members of such households for the first month of employment beginning after the date such members commence such employment if such employment commences—

(i) while such members are participating for the first time in a workfare program operated under this section; or

(ii) in the thirty-day period beginning on the date such first participation is terminated.

(3) The Secretary may suspend or cancel some or all of these payments, or may withdraw approval from a political subdivision to operate a workfare program, upon a finding that the subdivision has failed to comply with the workfare requirements.

[*Internal References.*—Social Security Act §§303(d)(1)(B), 402(a)(end), 410(a) and (c), and 1137(b)(4) and P.L. 95-348, §3(c) (Vol. II, p. 848) cite the Food Stamp Act of 1977; §303(d)(2)(B)(i) cites §13(c)(1); §303(d)(2)(B)(iii)(II) cites §13(c)(3)(A); §303(d)(2)(B)(iii)(III) cites §13(c)(3)(B); Social Security Act §303(d)(4) cites §3(n)(1) of the Food Stamp Act; P.L. 92-203, §29(b) (Vol. II, p. 515) cites §5(a) of the Food Stamp Act of 1964 (78 Stat. 703), as amended, and P.L. 93-288, §409(a) and (c) (Vol. II, p. 564) cite the Food Stamp Act of 1964. Social Security Act §§2(a)(10)(A), 202(e)(1)(C)(i), 205(c)(2)(C)(i), 303(d)(4), 402(a)(7)(C)(ii), 1002(a)(8)(C), 1402(a)(8)(C), 1602(a)(14)(D)(State), and the catchlines to §§202(f), (g), (h), 232, title IV, Part A (at §401), 410, 1106, title XVI (SSI), 1612(b), 1613(a), and 1631(e) have footnotes referring to P.L. 88-525.]

P.L. 88-643, Approved October 13, 1964 (78 Stat. 1043)

Central Intelligence Agency Retirement Act of 1964 for Certain Employees

* * * * * * *

SEC. 111. [50 U.S.C. 403 note] When used in this Act, the term—

* * * * * * *

(2) "Director" means the Director of Central Intelligence;

* * * * * * *

---

[158] P.L. 99-198, §1517(d), amended subsection (b) in its entirety.

TRANSITION PROVISIONS[1]

SEC. 307. [50 U.S.C. 403 note] (a) The Director shall issue regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.[2]

(b) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

* * * * * * *

[*Internal Reference.*—Social Security Act §210(a)(5)(H) cites §307 of the Central Intelligence Agency Retirement Act of 1964.]

P.L. 89-73, Approved July 14, 1965 (79 Stat. 218)

Older Americans Act of 1965

* * * * * * *

FEDERAL AGENCY CONSULTATION

SEC. 203. [42 U.S.C. 3013] (a) The Commissioner[1], in carrying out the purposes and provisions of this Act, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this Act, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this Act shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purposes of this Act, particularly administering any program set forth in subsection (b), shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.

(b) For the purposes of subsection (a), programs related to the purposes of this Act shall include—

(1) the Job Training Partnership Act[2],
(2) title II of the Domestic Volunteer Service Act of 1973,
(3) titles XVI,[3] XVIII, XIX, and XX of the Social Security Act,
(4) sections 231 and 232 of the National Housing Act,
(5) the United States Housing Act of 1937,
(6) section 202 of the Housing Act of 1959,
(7) title I of the Housing and Community Development Act of 1974,
(8)[4] title I of Higher Education Act of 1965[5] and the Adult Education Act,[6]
(9) sections 3,[7] 9, and 16 of the Urban Mass Transportation Act of 1964,[8]
(10) the Public Health Service Act,
(11) the Low-Income Home Energy Assistance Act of 1981,
(12) part A of the Energy Conservation in Existing Buildings Act of 1976, relating to weatherization assistance for low income persons,
(13) the Community Services Block Grant Act, and
(14) demographic statistics and analysis programs conducted by the Bureau of the Census under title 13, United States Code.[9]

* * * * * * *

SEC. 210.

* * * * * * *

---

[1] P.L. 99-335, §506, added §307.
[2] See P.L. 99-335 (Vol. II, p. 765).
[1] Commissioner on Aging, Department of Health and Human Services.
[2] P.L. 98-459, §203(a), struck out "Comprehensive Employment and Training Act" and substituted "Job Training Partnership Act".
[3] P.L. 98-459, §203(b), added "XVI,".
[4] P.L. 98-459, §203(c)(1), struck out "the community schools program under the Elementary and Secondary Education Act of 1965,".
[5] P.L. 98-459, §203(c)(2), struck out a comma.
[6] P.L. 98-459, §203(e)(1), struck out "and".
[7] P.L. 98-459, §203(d), struck out "5,".
[8] P.L. 98-459, §203(e)(2), struck out a period and substituted a comma.
[9] P.L. 98-459, §203(e)(3), added clauses (10) through (14).

(b) [42 U.S.C. 3020a] No part of the costs of any project under any title of this Act may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

* * * * * * *

SURPLUS PROPERTY ELIGIBILITY

SEC. 213. [42 U.S.C. 3020d] Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this Act, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act, shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

* * * * * * *

SEC. 306.

* * * * * * *

(c) [42 U.S.C. 3026] (1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

* * * * * * *

PROGRAM AUTHORIZED

SEC. 321. [42 U.S.C. 3030d] (a) The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for any of the following supportive services:

* * * * * * *

(4) services designed (A) to assist older individuals to obtain adequate housing, including residential repair and renovation projects designed to enable older individuals to maintain their homes in conformity with minimum housing standards; (B) to adapt homes to meet the needs of older individuals suffering from physical disabilities; or (C) to prevent unlawful entry into residences of elderly individuals, through the installation of security devices and through structural modifications or alterations of such residences;

* * * * * * *

if such services meet standards prescribed by the Commissioner and are necessary for the general welfare of older individuals.

PART C—NUTRITION SERVICES

SUBPART 1—CONGREGATE NUTRITION SERVICES

PROGRAM AUTHORIZED

SEC. 331. [42 U.S.C 3030e] The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects—

(1) which, 5 or more days a week, provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-

third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council;

(2) which shall be provided in congregate settings; and

(3) which may include nutrition education services and other appropriate nutrition services for older individuals.

SUBPART 2—HOME DELIVERED NUTRITION SERVICES

PROGRAM AUTHORIZED

SEC. 336. [42 U.S.C. 3030f] The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects for older individuals which, 5 or more days a week, provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage life) meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

CRITERIA

SEC. 337. [42 U.S.C. 3030g] The Commissioner, in consultation with organizations of and for the aged, blind, and disabled, and with representatives from the American Dietetic Association, the Association of Area Agencies on Aging, the National Association of Nutrition and Aging Services Programs, the National Association of Meals Programs, Incorporated, and any other appropriate group, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 336. The criteria required by this section shall take into account the ability of established home delivered meals programs to continue such services without major alteration in the furnishing of such services.

* * * * * * *

DEMONSTRATION PROJECTS

SEC. 422. [42 U.S.C. 3035a] (a) The Commissioner may, after consultation with the State agency in the State involved, make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization within such State for paying part or all of the costs of developing or operating nationwide, statewide, regional, metropolitan area, county, city, or community model projects which will demonstrate methods to improve or expand supportive services or nutrition services or otherwise promote the well-being of older individuals. The Commissioner shall give special consideration to the funding of rural area agencies on aging to conduct model projects devoted to the special needs of the rural elderly.[10] Such projects shall include alternative health care delivery systems, advocacy and outreach programs, and transportation services.

(b) In making grants and contracts under this section, the Commissioner shall give special consideration to projects designed to—

(1) meet the supportive services needs of elderly victims of Alzheimers' disease and other neurological and organic brain disorders of the Alzheimers' type and their families, including—

(A) home health care for such victims;

(B) adult day health care for such victims; and

(C) homemaker aides, transportation, and in-home respite care for the families, particularly spouses, of such victims;[11]

(2)[12] meet the special health care needs of the elderly, including—

(A) the location of older individuals who are in need of mental health services;

(B) the provision of, or arrangement for the provision of, medical differential diagnoses of older individuals to distinguish between their need for mental health services and other medical care;

(C) the specification of the mental health needs of older individuals, and the mental health and support services required to meet such needs; and

(D) the provision of—

---

[10] P.L. 98-459, §407(a), added the period.

[11] P.L. 98-459, §407(b)(2), added a new clause (1).

[12] P.L. 98-459, §407(b)(1), redesignated former clause (1) as clause (2).

(i) the mental health and support services specified in subclause[13] (C) in the communities; or

(ii) such services for older individuals in nursing homes and intermediate care facilities, and training of the employees of such homes and facilities in the provision of such services;

(3)[14] assist in meeting the special housing needs of older individuals by—

(A) providing financial assistance to such individuals, who own their own homes, necessary to enable them (i) to make the repairs or renovations to their homes, which are necessary for them to meet minimum standards, and (ii) to install security devices, and to make structural modifications or alterations, designed to prevent unlawful entry; and

(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals suffering from physical disabilities;

(4)[15] provide education and training to older individuals designed to enable them to lead more productive lives by broadening the education, occupational, cultural, or social awareness of such older individuals;

(5)[16] provide preretirement education information and relevant services (including the training of personnel to carry out such programs and the conduct of research with respect to the development and operation of such programs) to individuals planning retirement;

(6)[17] meet the special needs of, and improve the delivery of services to, older individuals who are not receiving adequate services under other provisions of this Act, with emphasis on the needs of low-income, minority, Indian, and limited English-speaking individuals and the rural elderly;

(7)[18] develop or improve methods of coordinating all available supportive services for the homebound elderly, blind, and disabled by establishing demonstration projects in ten States, in accordance with subsection (c); and

(8)[19] improve transportation systems for the rural elderly.

(c) The Commissioner shall consult with the Commissioner of the Rehabilitation Services Administration, the Commissioner of the Social Security Administration, and the Surgeon General of the Public Health Service, to develop procedures for—

(1) identifying elderly, blind, and disabled individuals who need supportive services;

(2) compiling a list in each community of all services available to the elderly, blind, and disabled; and

(3) establishing an information and referral service within the appropriate community agency to—

(A) inform those in need of the availability of such services; and

(B) coordinate the delivery of such services to the elderly, blind, and disabled.

The Commissioner shall establish procedures for administering demonstration projects under subsection (b)(6) not later than 6 months after the effective date of this subsection. The Commissioner shall report to the Congress with respect to the results and findings of the demonstration projects conducted under this section at the completion of the projects.

(d)(1) Whenever appropriate, grants made and contracts entered into under this section shall be developed in consultation with an appropriate gerontology center.

(2) Grants made and contracts entered into under this section shall include provisions for the appropriate dissemination of project results.[20]

[*Internal References.*—Social Security Act titles IV, XVIII, XIX, and XX and §§2(a)(10)(A), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), and 1612(b) have footnotes referring to P.L. 89-73.]

P.L. 89-97, Approved July 30, 1965 (79 Stat. 286)

Social Security Amendments of 1965

* * * * * * *

TRANSITIONAL PROVISION ON ELIGIBILITY OF PRESENTLY UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

SEC. 103. [42 U.S.C. 426a] (a) Anyone who—

(1) has attained the age of 65,

---

[13] P.L. 98-459, §407(b)(3), struck out "clause" and substituted "subclause".

[14] P.L. 98-459, §407(b)(1), redesignated clause (2) as clause (3).

[15] P.L. 98-459, §407(b)(1), redesignated clause (3) as clause (4).

[16] P.L. 98-459, §407(b)(1), redesignated clause (4) as clause (5).

[17] P.L. 98-459, §407(b)(1), redesignated clause (5) as clause (6).

[18] P.L. 98-459, §407(b)(1), redesignated clause (6) as clause (7).

[19] P.L. 98-459, §407(b)(1), redesignated clause (7) as clause (8).

[20] P.L. 98-459, §407(c), added subsection (d).

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in title II of the Social Security Act or section 5(l) of the Railroad Retirement Act of 1937), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 202 of the Social Security Act would not be, entitled to hospital insurance benefits under section 226 of such Act, and is not certifiable as a qualified railroad retirement beneficiary under section 21 of the Railroad Retirement Act of 1937 (as added by section 105(a) of this Act),

(4) is a resident of the United States (as defined in section 210(i) of the Social Security Act), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 226 of the Social Security Act, to be entitled to monthly insurance benefits under such section 202 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 202 of such Act would become) entitled to hospital insurance benefits under section 226 or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) The provisions of subsection (a) shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 210(a)(17) of the Social Security Act,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 202(u) of the Social Security Act, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5, United States Code,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of title XVIII of such Act with respect to individuals who are entitled to hospital insurance benefits under section 226 of such Act solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

SEC. 104. * * *

(b)(1) [42 U.S.C. 1395l note] No payments shall be made under part B of title XVIII of the Social Security Act with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act (relating to suspension of benefits of aliens who are outside the United States).

(2) [42 U.S.C. 1395o note] An individual who has been convicted of any offense under (A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended, may not enroll under part B of title XVIII of the Social Security Act.

SEC. 105. (a) * * *

(2) [45 U.S.C. 228s-2 note] For purposes of section 21 of the Railroad Retirement Act of 1937 (and sections 1840, 1843, and 1870 of the Social Security Act), entitlement to an annuity or pension under the Railroad Retirement Act of 1937 shall be deemed to include entitlement under the Railroad Retirement Act of 1935.

* * * * * * *

MEANING OF TERM "SECRETARY"

SEC. 110. [42 U.S.C. 1301 note] As used in this Act, and in the provisions of the Social Security Act amended by this Act, the term "Secretary", unless the context otherwise requires, means the Secretary of Health, Education, and Welfare.

SEC. 111. * * *

(d) [42 U.S.C. 1395i-1] There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of title XVIII of such Act with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 226(c) of such Act) and who are not, and upon filing application for monthly insurance benefits under section 202 of such Act would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under part A of title XVIII of the Social Security Act.

(e) [42 U.S.C. 1395i-1 note] (1) The amendments made by the preceding provisions of this section shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act provides may be counted for such calendar year.

* * * * * * *

SEC. 121. * * *

(b) [42 U.S.C. 1396b note] No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act, or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972, Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be) provided under a State plan approved under title XIX of such Act by an institution certified under such title XIX.

* * * * * * *

[*Internal References.*—Social Security Act §§226(h), 1818(c)(5), and 1869(b)(1)(A) cite §103 of the Social Security Amendments of 1965. Social Security Act titles I, IV, X, XIV, and XVI (State) and §1817 (catchline) have footnotes referring to P.L. 89-97.]

P.L. 89-117, Approved August 10, 1965 (79 Stat. 451)
Housing and Urban Development Act of 1965[1]

* * * * * * *

SEC. 101. [12 U.S.C. 1701s] (a) The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to make, and contract to make, annual payments to a "housing owner" on behalf of "qualified tenants", as those terms are defined herein, in such amounts and under such circumstances as are prescribed in or pursuant to this section. In no case shall a contract provide for such payments with respect to any housing for a period exceeding forty years. The aggregate amount of the contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contract shall not exceed $150,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $40,000,000, on July 1, 1969, by $100,000,000 on July 1, 1970, and by $40,000,000 on July 1, 1971.

(b) As used in this section, the term "housing owner" means a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under section 221(d)(3) of the National Housing Act and which, after the enactment of this section[2], has been approved for mortgage insurance thereunder and has been approved for receiving the benefits of this section: *Provided,* That, except as provided in subsection (h), no payments under this section may be made with respect to any property financed with a mortgage receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of that Act. Such term also includes a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is the owner of a rental or cooperative housing project financed under a State or local program providing assistance through loans, loan insurance, or tax abatement and which may involve either new or existing construction and which is approved for receiving the benefits of this section. Subject to the limitations provided in subsection (h), the term "housing owner" also has the meaning prescribed in such subsection. Nothing in this section shall be construed as preventing payments to a housing owner with respect to projects in which all or part of the dwelling units do not contain kitchen facilities; but of the total amount of contracts to make annual payments approved in appropriation Acts pursuant to subsection (a) after the date of enactment of the Housing and Urban Development Act of 1970[3], not more than 10 per centum in the aggregate shall be made with respect to such projects.

(c) As used in this section, the term—

(1) "qualified tenant" means any individual or family having an income which would qualify such individual or family for assistance under section 8 of the United States Housing Act of 1937, except that such term shall also include any individual or family who was receiving assistance under this section on the day preceding the date of the enactment of the Housing and Community Development Amendments of 1979, so long as such individual or family continues to meet the conditions for such assistance which were in effect on such day; and

(2) "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

---

[1] See P.L. 94-375, §2(h), with respect to exclusion of assistance under P.L. 89-117, §101, from income and resources for purposes of title XVI of the Social Security Act, in Vol. II, p. 585.

[2] August 10, 1965 (P.L. 89-117, 79 Stat. 451).

[3] December 31, 1970 (P.L. 91-609, 84 Stat. 1770).

The terms "qualified tenant" and "tenant" include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership to the cooperative, will not be reimbursed for any equity increment accumulated through payments under this section. With respect to members of a cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between such members and the cooperative.

(d) The amount of the annual payment with respect to any dwelling unit shall be the lesser of (1) 70 per centum of the fair market rent, or (2) the amount by which the fair market rental for such unit exceeds 30 per centum of the tenant's adjusted income.

(e) (1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The Secretary shall issue, upon the request of a housing owner, certificates as to the following facts concerning the individuals and families applying for admission to, or residing in, dwellings of such owner:

(A) the income of the individual or family; and

(B) whether the individual or family was occupying substandard housing, was paying more than 50 per centum of family income for rent,[4] or was involuntarily displaced at the time it was seeking assistance under this section.

(2) Procedures adopted by the Secretary hereunder shall provide for recertifications of the income of occupants no less frequently than annually for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this section for any dwelling exceed the fair market rental of the dwelling.

(3) The Secretary may enter into agreements, or authorize housing owners to enter into agreements, with public or private agencies for services required in the selection of qualified tenants, including those who may be approved, on the basis of the probability of future increases in their incomes, as lessees under an option to purchase (which will give such approved qualified tenants an exclusive right to purchase at a price established or determined as provided in the option) dwellings, and in the establishment of rentals. The Secretary is authorized (without limiting his authority under any other provision of law) to delegate to any such public or private agency his authority to issue certificates pursuant to this subsection.

(4) No payments under this section may be made with respect to any property for which the costs of operation (including wages and salaries) are determined by the Secretary to be greater than similar costs of operation of similar housing in the community where the property is situated.

* * * * * * *

[*Internal References.*—Social Security Act §§1612(b) and 1613(a) have footnotes referring to this public law; and P.L. 94-375, §2(h), cites §101 of the Housing and Urban Development Act of 1965.]

P.L. 89-329, Approved November 8, 1965 (79 Stat. 1219)
Higher Education Act of 1965

* * * * * * *

Title IV—Student Assistance[1]

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

STATEMENT OF PURPOSE; PROGRAM AUTHORIZATION

SEC. 401. [20 U.S.C. 1070] (a) PURPOSE.—It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 484) in institutions of higher education by—

(1) providing basic educational opportunity grants to all eligible students;

(2) providing supplemental educational opportunity grants to those students who demonstrate financial need;

* * * * * * *

---

[4] P.L. 98-181, §203(b)(3), added ", was paying more than 50 per centum of family income for rent,".

[1] P.L. 99-498, §401(a), amended Part A of Title IV in its entirety, effective October 17, 1986.

Part F—Need analysis[2]

* * * * * * *

COST OF ATTENDANCE

Sec. 472. [20 U.S.C. 1087ll] For the purpose of this title (except for subpart 1 of part A and subject to section 478), the term "cost of attendance" means—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

* * * * * * *

STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS

Sec. 479B. [20 U.S.C. 1087uu] No portion of any student financial assistance received by an individual from any program funded in whole or in part under title IV of this Act which is used by that individual for costs described in section 472 (1) and (2) of this title, shall be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7)(end), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 89-329.]

P.L. 89-642, Approved October 11, 1966 (80 Stat. 885)

Child Nutrition Act of 1966

* * * * * * *

Sec. 11.

* * * * * * *

(b) [42 U.S.C. 1780] The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this Act.

* * * * * * *

SPECIAL SUPPLEMENTAL FOOD PROGRAM

Sec. 17. [42 U.S.C. 1786] (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems and improve the health status of these persons.

---

[2] P.L. 99-498, §406(a), redesignated the former Part F as Part G, and added this Part F. Section 406(b)(1) and (2) read as follows:

"(b) Effective dates for need analysis provisions.—(1) Except as provided in paragraphs (2) and (3)—

(A) part F of title IV of the Act shall apply with respect to determinations of need under such title for academic years beginning with academic year 1988-1989 and succeeding academic years; and

(B) for any preceding academic year, determinations of need shall be made in accordance with regulations prescribed by the Secretary of Education in accordance with the Student Financial Assistance Technical Amendments Act of 1982.

(2) With respect to an application filed after the date of enactment of this Act for a loan under part B of such title for any academic year preceding academic year 1988-1989, any determination of expected family contribution shall be made using the system of financial need analysis approved by the Secretary of Education for use under subpart 2 of part A and parts C and E of such title.".

(b) As used in this section—

(1)[1] "Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

(2)[2] "Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

(3)[3] "Competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) "Costs for nutrition services and administration" means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.[4]

(5) "Infants" means persons under one year of age.

(6) "Local agency" means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services[5], or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) "Nutrition education" means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(8) "Nutritional risk" means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, or (D) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, alcoholism and drug addiction.

(9) "Plan of operation and administration" means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) "Postpartum women" means women up to six months after termination of pregnancy.

(11) "Pregnant women" means women determined to have one or more fetuses in utero.

(12) "Secretary" means the Secretary of Agriculture.

(13) "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services[6].

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State

---

[1] P.L. 99-500, §341(a)(1), struck out paragraph (1) and §341(a)(2) redesignated paragraph (2) as paragraph (1).
P.L. 99-591, §341(a)(1) and (a)(2), made the same amendments as P.L. 99-500, §341(a)(1) and (a)(2).
P.L. 99-661, §4301(a)(1) and (a)(2), made the same amendments as P.L. 99-500, §341(a)(1) and (a)(2), and P.L. 99-591, §341(a)(1) and (a)(2).

[2] P.L. 99-500, §341(a)(2), redesignated paragraph (3) as paragraph (2).
P.L. 99-591, §341(a)(2), made the same amendment as P.L. 99-500, §341(a)(2).
P.L. 99-661, §4301(a)(2), made the same amendment as P.L. 99-500, §341(a)(2), and P.L. 99-591, §341(a)(2).

[3] P.L. 99-500, §341(a)(2), redesignated paragaph (4) as paragraph (3).
P.L. 99-591, §341(a)(2), made the same amendment as P.L. 99-500, §341(a)(2).
P.L. 99-661, §4301(a)(2), made the same amendment as P.L. 99-500, §341(a)(2), and P.L. 99-591, §341(a)(2).

[4] P.L. 99-500, §341(a)(3), added this paragraph (4).
P.L. 99-591, §341(a)(3), made the same amendment as P.L. 99-500, §341(a)(3).
P.L. 99-661, §4301(a)(3), made the same amendment as P.L. 99-500, §341(a)(3), and P.L. 99-591, §341(a)(3).

[5] P.L. 99-500, §372(b)(1), struck out ", Education, and Welfare" and substituted "and Human Services".
P.L. 99-591, §372(b)(1), made the same amendment as P.L. 99-500, §372(b)(1).
P.L. 99-661, §4502(b)(1), made the same amendment as P.L. 99-500, §372(b)(1), and P.L. 99-591, §372(b)(1).

[6] See footnote 5.

agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(c)(1) The Secretary may carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to the food stamp program (91 Stat. 958) and to any program under which foods are distributed to needy families in lieu of food stamps.

(2) Subject to amounts appropriated to carry out this section under subsection (g)[7]—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.[8]

(d)(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 9 of the National School Lunch Act.

(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(4) The Secretary shall report biennially to Congress on—

(A) the income and nutritional risk characteristics of participants in the program;

(B) participation in the program by members of families of migrant farmworkers; and

(C) such other matters relating to participation in the program as the Secretary considers appropriate.[9]

(e)(1) The State agency shall ensure that nutrition education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.

---

[7] P.L. 99-500, §314(1), struck out "the authorization levels specified in subsection (g) of this section for the fiscal years ending September 30, 1979, and September 30, 1980, and subject to amounts appropriated for this program for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984" and substituted "amounts appropriated to carry out this section under subsection (g)".

P.L. 99-591, §314(1), made the same amendment as P.L. 99-500, §314(1).

P.L. 99-661, §4104(1), made the same amendment as P.L. 99-500, §314(1), and P.L. 99-591, §314(1).

[8] P.L. 99-500, §342(a), added paragraph (4).

P.L. 99-591, §342(a), made the same amendment as P.L. 99-500, §342(a).

P.L. 99-661, §4302(a), made the same amendment as P.L. 99-500, §342(a), and P.L. 99-591, §342(a).

[9] P.L. 99-500, §343(a), added paragraph (4).

P.L. 99-591, §343(a), made the same amendment as P.L. 99-500, §343(a).

P.L. 99-661, §4303(a), made the same amendment as P.L. 99-500, §343(a), and P.L. 99-591, §343(a).

(2) The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services[10] for comment, issue such materials for use in the program under this section.

(f)(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

(ii) a description of the financial management system of the State agency;

(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

(v) a plan to expend funds to carry out the program during the relevant fiscal year;

(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

(viii) such other information as the Secretary may require.

(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).[11]

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.[12]

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program. Each State agency shall be responsible for admininstering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6) The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.

---

[10] See footnote 5.

[11] P.L. 99-500, §344(a), amended paragraph (1) in its entirety.
P.L. 99-591, §344(a), made the same amendment as P.L. 99-500, §344(a).
P.L. 99-661, §4304(a), made the same amendment as P.L. 99-500, §344(a), and P.L. 99-591, §344(a).

[12] P.L. 99-500, §345, amended paragraph (2) in its entirety.
P.L. 99-591, §345, made the same amendment as P.L. 99-500, §345.
P.L. 99-661, §4305, made the same amendment as P.L. 99-500, §345, and P.L. 99-591, §345.

(7) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.[13]

(9) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(10) If a person certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that person's certification of eligibility shall remain valid for the period for which the person was originally certified.

(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration[14] as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate. Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns.

(14) The State agency shall (A) provide nutrition education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.[15]

(g)(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989.[16]

---

[13] P.L. 99-500, §346, amended paragraph (8) in its entirety.
P.L. 99-591, §346, made the same amendment as P.L. 99-500, §346.
P.L. 99-661, §4306, made the same amendment as P.L. 99-500, §346, and P.L. 99-591, §346.

[14] P.L. 99-500, §341(b)(1), struck out "administrative funds" and substituted "funds for nutrition services and administration".
P.L. 99-591, §341(b)(1), made the same amendment as P.L. 99-500, §341(b)(1).
P.L. 99-661, §4301(b)(1), made the same amendment as P.L. 99-500, §341(b)(1), and P.L. 99-591, §341(b)(1).

[15] P.L. 99-500, §347, added paragraph (15).
P.L. 99-591, §347, made the same amendment as P.L. 99-500, §347.
P.L. 99-661, §4307, made the same amendment as P.L. 99-500, §347, and P.L. 99-591, §347.

(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.[17]

(3)[18] Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing the report required under subsection (d)(4),[19] providing technical assistance to improve State agency administrative systems,[20] and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(h)(1) The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration[21]. When reallocating funds, the Secretary may exceed the 20 percent limitation for costs for nutrition services and administration[22] if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program. Not less than one-sixth of the funds expended by each State agency for costs for nutrition services and administration[23] under this subsection shall be used for nutrition education activities, unless the State agency requests that it be authorized to expend a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities. The Secretary shall limit to a minimal level any documentation required under the preceding sentence.[24]

(2) The Secretary, for each of the fiscal years 1979 through 1989[25], shall allocate funds for nutrition services and administration[26] to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

(3) Each State agency shall provide, from its allocation for funds for nutrition services and administration[27], funds to local agencies for their costs for nutrition services and administration[28]. Each State agency shall distribute funds for nutrition services and administration[29] to local agencies under allocation standards developed by the State agency in cooperation with the several local agencies[30]. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing

---

[16] P.L. 99-500, §314(2)(A), designated the first sentence of subsection (g) as (g)(1) and §314(2)(B) amended paragraph (1) [as so designated] in its entirety.

P.L. 99-591, §314(2)(A) and (B), made the same amendments as P.L. 99-500, §314(2)(A) and (B).

P.L. 99-661, §4104(2)(A) and (B), made the same amendments as P.L. 99-500, §314(2)(A) and (B), and P.L. 99-591, §314(2)(A) and (B); except "$1,570,000,000" was substituted for "$1,580,494,000".

[17] P.L. 99-500, §348(a), added paragraph (2).

P.L. 99-591, §348(a), made the same amendment as P.L. 99-500, §348(a).

P.L. 99-661, §4308(a), made the same amendment as P.L. 99-500, §348(a), and P.L. 99-591, §348(a).

[18] P.L. 99-500, §314(2)(A), designated the second sentence of subsection (g) as (g)(3).

P.L. 99-591, §314(2)(A), made the same amemdment as P.L. 99-500, §314(2)(A).

P.L. 99-661, §4104(2)(A), made the same amendment as P.L. 99-500, §341(2)(A), and P.L. 99-591, §314(2)(A).

[19] P.L. 99-500, §343(b), inserted "preparing the report required under subsection (d)(4),".

P.L. 99-591, §343(b), made the same amendment as P.L. 99-500, §343(b).

P.L. 99-661, §4303(b), made the same amendment as P.L. 99-500, §343(b), and P.L. 99-591, §343(b).

[20] P.L. 99-500, §349, inserted "providing technical assistance to improve State agency administrative systems,".

P.L. 99-591, §349, made the same amendment as P.L. 99-500, §349.

P.L. 99-661, §4309, made the same amendment as P.L. 99-500, §349, and P.L. 99-591, §349.

[21] P.L. 99-500, §341(b)(2), struck out "administrative costs" and substituted "costs for nutrition services and administration".

P.L. 99-591, §341(b)(2), made the same amendment as P.L. 99-500, §341(b)(2).

P.L. 99-661, §4301(b)(2), made the same amendment as P.L. 99-500, §341(b)(2), and P.L. 99-591, §341(b)(2).

[22] See footnote 21.

[23] See footnote 21.

[24] P.L. 99-500, §350, added this sentence.

P.L. 99-591, §350, made the same amendment as P.L. 99-500, §350.

P.L. 99-661, §4310, made the same amendment as P.L. 99-500, §350, and P.L. 99-591, §350.

[25] P.L. 99-500, §314(3), struck out "1984" and substituted "1989".

P.L. 99-591, §314(3), made the same amendment as P.L. 99-500, §314(3).

P.L. 99-661, §4104(3), made the same amendment as P.L. 99-500, §314(3), and P.L. 99-591, §314(3).

[26] See footnote 14.

[27] See footnote 14.

[28] See footnote 21.

[29] See footnote 14.

[30] P.L. 99-500, §351(1), struck out ", which satisfy allocation guidelines established by the Secretary".

P.L. 99-591, §351(1), made the same amendment as P.L. 99-500, §351(1).

P.L. 99-661, §4311(1), made the same amendment as P.L. 99-500, §351(1), and P.L. 99-591, §351(1).

(4) The State agency may[32] forward in advance to local agencies those funds for nutrition services and administration[33] necessary for successful commencement of program operations under this section during the three months following approval or until a program reaches its projected caseload level, whichever comes first.

(i)(1)[34] By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary.

(2)[35] Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2)—

(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.[36]

(4)[37] For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5)[38] If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6)[39] Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(j) By October 1 of each year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the "Council") composed of twenty-one members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a
needs, density of population, number of persons served, and availability of administrative support from other sources.[31]

---

[31] P.L. 99-500, §351(2), struck out "These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.".
P.L. 99-591, §351(2), made the same amendment as P.L. 99-500, §351(2).
P.L. 99-661, §4311(2), made the same amendment as P.L. 99-500, §351(2), and P.L. 99-591, §351(2).

[32] P.L. 99-500, §352, struck out "shall" and substituted "may".
P.L. 99-591, §352, made the same amendment as P.L. 99-500, §352.
P.L. 99-661, §4312, made the same amendment as P.L. 99-500, §352, and P.L. 99-591, §352.

[33] See footnote 14.

[34] P.L. 99-500, §353(a)(1), designated the first sentence of subsection (i) as (i)(1).
P.L. 99-591, §353(a)(1), made the same amendment as P.L. 99-500, §353(a)(1).
P.L. 99-661, §4313(a)(1), made the same amendment as P.L. 99-500, §353(a)(1), and P.L. 99-591, §353(a)(1).

[35] P.L. 99-500, §353(a)(1), designated the second sentence of subsection (i) as (i)(2).
P.L. 99-591, §353(a)(1), made the same amendment as P.L. 99-500, §353(a)(1).
P.L. 99-661, §4313(a)(1), made the same amendment as P.L. 99-500, §353(a)(1), and P.L. 99-591, §353(a)(1).

[36] P.L. 99-500, §353(a)(2), added paragraph (3).
P.L. 99-591, §353(a)(2), made the same amendment as P.L. 99-500, §353(a)(2).
P.L. 99-661, §4313(a)(2), made the same amendment as P.L. 99-500, §353(a)(2), and P.L. 99-591, §353(a)(2).

[37] P.L. 99-500, §353(a)(1), designated the third sentence of subsection (i) as (i)(4).
P.L. 99-591, §353(a)(1), made the same amendment as P.L. 99-500, §353(a)(1).
P.L. 99-661, §4313(a)(1), made the same amendment as P.L. 99-500, §353(a)(1), and P.L. 99-591, §353(a)(1).

[38] P.L. 99-500, §353(a)(1), designated the fourth sentence of subsection (i) as (i)(5).
P.L. 99-591, §353(a)(1), made the same amendment as P.L. 99-500, §353(a)(1).
P.L. 99-661, §4313(a)(1), made the same amendment as P.L. 99-500, §353(a)(1), and P.L. 99-591, §353(a)(1).

[39] P.L. 99-500, §353(a)(1), designated the fifth sentence of subsection (i) as (i)(6).
P.L. 99-591, §353(a)(1), made the same amendment as P.L. 99-500, §353(a)(1).
P.L. 99-661, §4313(a)(1), made the same amendment as P.L. 99-500, §353(a)(1), and P.L. 99-591, §353(a)(1).

program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental food program; one member shall be a person involved at the retail sales level of food in the special supplemental food program; two members shall be officials of the Department of Health and Human Services[40] appointed by the Secretary of Health and Human Services[41]; and two members shall be officials of the Department of Agriculture appointed by the Secretary.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services[42] shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Secretary shall designate a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.

(5) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(6) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(l) Foods available under section 416 of the Agriculture Act of 1949, including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

* * * * * * *

[*Internal References.*—Social Security Act §1920(b)(2)(D)(ii)(I) cites section 17 of the Child Nutrition Act of 1966. The catchlines to Social Security Act §§1612(b) and 1613(a) and §§402(a)(7)(C)(ii) and 1002(a)(8)(C) have footnotes referring to P.L. 89-642.]

P.L. 90-248, Approved January 2, 1968 (81 Stat. 821)

Social Security Amendments of 1967

* * * * * * *

SEC. 202.* * *

(d) [42 U.S.C. 602 note] Effective with respect to quarters beginning after June 30, 1968, in determining the need of individuals claiming aid under a State plan approved under part A of title IV of the Social Security Act, the State shall apply the provisions of such part notwithstanding any provisions of law (other than such Act) requiring the

---

[40] See footnote 5.
[41] See footnote 5.
[42] See footnote 5.

State to disregard earned income of such individuals in determining need under such State plan.

* * * * * * *

SEC. 234.* * *

(c) [42 U.S.C. 1396a note] Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.

* * * * * * *

SEC. 248.* * *

(c) [42 U.S.C. 602 note] Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a)(7) of such Act as in effect before the enactment of this Act nor the provisions of section 402(a)(8) of such Act as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act shall provide for the disregarding of income in making the determination under section 402(a)(7) of such Act in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a)(8) of such Act to reflect appropriately the applicable differences in income levels.

(d) [42 U.S.C. 1396b note] The amendment made by section 220(a) of this Act shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.

* * * * * * *

INCENTIVES FOR ECONOMY WHILE MAINTAINING OR IMPROVING QUALITY IN THE PROVISION OF HEALTH SERVICES[1]

SEC. 402. [42 U.S.C. 1395b-1] (a)(1) The Secretary of Health, Education, and Welfare is authorized, either directly or through grants to public or[2] private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 401(c) of the Mental Retardation Facilities and Community Health Centers Construction Act of 1963),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

---

[1] See 38 U.S.C. 5053, with respect to the provision of hospital care or medical services by the Veterans Administration; Vol. II, p. 215.

See P.L. 95-210, [Social Security-Rural Health Clinic Services], §3, with respect to demonstration projects; Vol. II, p. 598.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(i), with respect to hospice demonstration projects and a report to Congress; Vol. II, p. 665.

See P.L. 99-509, "Omnibus Budget Reconciliation Act of 1986", §9307(b), with respect to the Massachusetts medicare repayment; Vol. II, p. 777.

[2] P.L. 98-369, §2331(b), struck out "nonprofit".

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by the Social Security Act, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under title XVIII of the Social Security Act; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by the Social Security Act;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by the Social Security Act for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of title XVIII and title XIX of the Social Security Act, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under titles XVIII and XIX of this Act in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of title XI would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, "health programs established by the Social Security Act" means the program established by title XVIII of such Act and a program established by a plan of a State approved under title XIX of such Act.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made

either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) In the case of any experiment or demonstration project under subsection (a), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

* * * * * * *

[*Internal References.*—Social Security Act §§202(t)(4)(end), 215(d)(2)(C)(i) and (d)(3) and 216(i)(2)(F)(i), (i)(2)(F)(ii), (i)(2)(F)(ii)(I) and (i)(2)(F)(ii)(II) cite the Social Security Amendments of 1967 in connection with effective dates; §§1814(b)(3) and 1875(b) cite §402; §1886(c)(4)(B) cites §402(a) of the Social Security Amendments of 1967. Social Security Act §§2(a)(10)(A), 402(a)(7)(C)(ii), 1002(a)(8)(C), 1402(a)(8)(C) and 1602(a)(14)(D)(State) have footnotes referring to P.L. 90-248.]

P.L. 90-321, Approved May 29, 1968 (82 Stat. 146)

Consumer Credit Protection Act

* * * * * * *

RESTRICTION ON GARNISHMENT

SEC. 303. [15 U.S.C. 1673] (a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed[1]

* * * * * * *

(b)(1) The restrictions of subsection (a) do not apply in the case of[2]

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

---

[1] As in original. No punctuation.

[2] See footnote 1.

(c) No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

* * * * * * *

EXEMPTION FOR STATE-REGULATED GARNISHMENTS

Sec. 305. [15 U.S.C. 1675] The Secretary of Labor may by regulation exempt from the provisions of section 303(a) and (b)(2) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishments which are substantially similar to those provided in section 303(a) and (b)(2).

* * * * * * *

TITLE VI—CONSUMER CREDIT REPORTING

§ 601. Short title [15 U.S.C. 1601 note]

This title may be cited as the Fair Credit Reporting Act.

* * * * * * *

Sec. 603. [15 U.S.C. 1681a] * * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * * * *

TITLE IX—ELECTRONIC FUND TRANSFERS

SHORT TITLE

Sec. 901. [15 U.S.C. 1601 note] This title may be cited as the "Electronic Fund Transfer Act".

FINDINGS AND PURPOSE

Sec. 902. [15 U.S.C. 1693] (a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

DEFINITIONS

Sec. 903. [15 U.S.C. 1693a] As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account:[3]

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

* * * * * * *

TERMS AND CONDITIONS OF TRANSFERS

SEC. 905. [15 U.S.C. 1693c] (a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosure shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

---

[3] As in original. Probably should be a semicolon.

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than[4] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 910; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this title, the information required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 906(c) after the effective date of this title; or

(2) thirty days after the effective date of this title.

* * * * * * *

ISSUANCE OF CARDS OR OTHER MEANS OF ACCESS

Sec. 911. [15 U.S.C. 1693i] (a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

---

[4] As in original. Should be "that".

SUSPENSION OF OBLIGATIONS

SEC. 912. [15 U.S.C. 1693j] If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

COMPULSORY USE OF ELECTRONIC FUND TRANSFERS

SEC. 913. [15 U.S.C. 1693k] No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

WAIVER OF RIGHTS

SEC. 914. [15 U.S.C. 1693l] No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

CIVIL LIABILITY

SEC. 915. [15 U.S.C. 1693m] (a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

CRIMINAL LIABILITY

SEC. 916. [15 U.S.C. 1693n] (a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

ADMINISTRATIVE ENFORCEMENT

SEC. 917. [15 U.S.C. 1693o] (a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.[5]

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

(5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

* * * * * * *

RELATION TO STATE LAWS

SEC. 919. **[**15 U.S.C. 1693q**]** This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

EXEMPTION FOR STATE REGULATION

SEC. 920. **[**15 U.S.C. 1693r**]** The Board shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

* * * * * * *

[*Internal References.*—Social Security Act §§465(a)(1) and 466(b)(1) cite §303(b); §465(a)(1) also cites §§303(b)(1)(A) and 303(c); and §466(a)(7) cites §603(f) of the Fair Credit Reporting Act (Title VI of P.L. 90-321). The catchlines to SSAct §§205 and 1631 have footnotes referring to P.L. 90-321.**]**

---

[5] As in original. Probably should be a semicolon.

P.L. 90-486, Approved August 13, 1968 (82 Stat. 755)
National Guard Technicians Act of 1968

* * * * * * *

SEC. 6. [32 U.S.C. 709 note] (a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act, is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act, not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act; or

(2) is on active duty under section 265, 3015, 3033, 3496, 8033 or 8496 of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled.

* * * * * * *

[*Internal References.*—Social Security Act §218(b)(5) cites §6 of the National Guard Technicians Act of 1968.]

P.L. 91-173, Approved December 30, 1969 (83 Stat. 742)
Federal Mine Safety and Health Act of 1977[1] (As Amended)

* * * * * * *

---

[1] Parts A and B of title IV of the Federal Mine Safety and Health Act of 1977 are administered by the Social Security Administration, Department of Health and Human Services.

Part C of title IV of the Federal Mine Safety and Health Act of 1977 is administered by the Employment Standards Administration, Department of Labor.

TITLE IV—BLACK LUNG BENEFITS

Part A—General

Sec. 401. [30 U.S.C. 901] (a) Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

(b) This title may be cited as the "Black Lung Benefits Act".

Sec. 402. [30 U.S.C. 902] For purposes of this title—

(a) The term "dependent" means—

(1) a child as defined in subsection (g) without regard to subparagraph (2)(B)(ii) thereof; or

(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 216(b)(1) or (2) of the Social Security Act. The determination of an individual's status as the "wife" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. The term "wife" also includes a "divorced wife" as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

(e) The term "widow" includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c)(1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the "widow" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. Such term also includes a "surviving divorced wife" as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

(f)(1) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare for claims under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and

(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of—

(A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);

(B) any claim which is subject to review by the Secretary of Labor under section 435(b); and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term "child" means a child or a step-child who is—

(1) unmarried; and

(2)(A) under eighteen years of age, or

(B)(i) under a disability as defined in section 223(d) of the Social Security Act,

(ii) which began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

(C) a student.

The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, or a "student" as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the "child" of the miner or widow, as the case may be, shall be made in accordance with section 216(h)(2) or (3) of the Social Security Act as if such miner or widow were the "insured individual" referred to therein.

(h) The term "fund" means the Black Lung Disability Trust Fund established by section 9501 of the Internal Revenue Code of 1954.

(i) For the purposes of subsections (c) and (j) of section 422, and for the purposes of paragraph (7) of subsection (d) of section 9501 of the Internal Revenue Code of 1954, the term "claim denied" means a claim—

(1) denied by the Social Security Administration; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to the date of enactment of the Black Lung Benefits Reform Act of 1977[2] and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 following a formal hearing or administrative or judicial review proceeding.

Part B—Claims for Benefits Filed on or Before December 31, 1973

Sec. 411. [30 U.S.C. 921] (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981[3], who at the time of his death was totally disabled by pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted.[4] Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

---

[2] P.L. 95-239 (92 Stat. 95), approved March 1, 1978.
[3] January 1, 1982 [P.L. 97-119, §201(a), §206(a); 95 Stat. 1643, 1645]
[4] See footnote 3.

(c) For purposes of this section—

(1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

(2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981[5].

(3) If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.[6] as the case may be.

(4) if[7] a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981[8].

(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977[9] who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 412(a)(2), unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981[10].

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. [30 U.S.C. 922] (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37 1/2 per centum of the monthly pay rate for Federal employees in grade GS-2, step 1.

---

[5] See footnote 3.
[6] As in original. Period should be deleted.
[7] As in original. Should be "If".
[8] See footnote 3.
[9] See footnote 2.
[10] See footnote 3.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981[11], of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of also miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981[12], of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g): *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981[13], of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 411(c), or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

(1)(A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) cf the Social Security Act which began before the age specified in section 202(d)(1)(B)(ii) of such Act, or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 402(g); or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act, during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, "dependent" means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the

---

[11] See footnote 3.
[12] See footnote 3.
[13] See footnote 3.

miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted,[14] or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the miner's household", "totally dependent upon the miner for support," and "good cause," shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(l) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act.

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. [30 U.S.C. 923] (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981[15], shall be considered to be sufficient to establish that the miner was totally disabled due to pnuemoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981[16] , in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented.

---

[14] May 19, 1972, was the date of enactment for §412(a)(5); P.L. 92-303 (86 Stat. 150), §1(b)(2).

[15] See footnote 3.

[16] See footnote 3.

In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act. Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

SEC. 414. [30 U.S.C. 924] (a)(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following the month in which this paragraph is enacted[17], and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following the month in which this paragraph is enacted[18], and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

---

[17] P.L. 92-303 (86 Stat. 152), approved May 19, 1972.
[18] See footnote 17.

(b) No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act[19], reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow, child, parent, brother, or sister under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, (2) the death of such miner occurred prior to January 1, 1974, or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).

* * * * * * *

Sec. 415. [30 U.S.C. 925] (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973[20] to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of the Internal Revenue Code of 1954, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in section 19(b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

(5) Any operator who has been notified of the pendency of a claim under paragraph 4[21] of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

Part C—Claims for Benefits After December 31, 1973

Sec. 421. [30 U.S.C. 931] (a) On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved.[22] they shall be entitled to claim benefits under this part.

(b)(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

---

[19] P.L. 91-173 (83 Stat. 742), approved December 30, 1969.

[20] As in original. Should have a comma after "1973".

[21] As in original. Should be "(4)".

[22] As in original. Period should be deleted.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 423 with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 402(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

SEC. 422. [30 U.S.C. 932] (a) Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during[23] any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof), shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of the Internal Revenue Code of 1954), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 411(c). In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction.

---

[23] P.L. 98-426, §28(h)(2), struck out "During" and substituted "Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during".
P.L. 98-426, §28(h)(1), provided that "the amendments made by section 7 of this Act shall not apply to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.)".

Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis (1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; or (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 424(b)(5) of this title for interest owed to the fund. With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981[24], such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

(f) Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

(1) a medical determination of total disability due to pneumoconiosis; or

(2) the date of the enactment of the Black Lung Benefits Reform Act of 1977[25].

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981[26] shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(h) The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a "prior operator") who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

---

[24] See footnote 3.
[25] See footnote 2.
[26] See footnote 3.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of the Internal Revenue Code of 1954 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

(j) Notwithstanding the provisions of this section, section 9501 of the Internal Revenue Code of 1954 shall govern the payment of benefits in cases—

(1) described in section 9501(d)(1) of the Internal Revenue Code of 1954;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 435.

(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

(l) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,[27], [28].

SEC. 423. [30 U.S.C. 933] (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection[29] shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d)(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

---

[27] See footnote 3.

[28] As in original. Comma should be deleted.

[29] As in original. Should be "section".

SEC. 424. [30 U.S.C. 934] (a) For purposes of this section, the term "fund" has the meaning set forth in section 402(h).

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 422, and

(B) the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423. In a case where no operator responsibility is assigned pursuant to sections 422 and 423, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes—

(i) by substituting "lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "lien imposed by section 6321"; "operator liability lien" for "tax lien"; "operator" for "taxpayer"; "lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "assessment of the tax"; "payment of the liability is made to the Black Lung Disability Trust Fund" for "satisfaction of a levy pursuant to section 6332(b)"; and "satisfaction of operator liability" for "collection of any tax under this title" each place such terms appear; and

(ii) by treating all references to the "Secretary" as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191)[30].

(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of the Internal Revenue Code of 1954.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

---

[30] P.L. 97-258, §5(b), repealed §3466 of the Revised Statutes. See, instead, 31 U.S.C. 3713.

SEC. 425. [30 U.S.C. 935] With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. [30 U.S.C. 936] (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shallelieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

SEC. 427. [30 U.S.C. 937] (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.[31]

(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section $10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.

SEC. 428. [30 U.S.C. 938] (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term "miner" shall not include any person who has been found to be totally disabled.

(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each administrative law judge presiding under this section and under the provisions of titles I, II and III of this Act shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

---

[31] 35 U.S.C. §§200-211 [with respect to patents and trademarks] take precedence over this subsection 427(b), in accordance with P.L. 96-517, §6(a), effective July 1, 1981.

(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

SEC. 429. [30 U.S.C. 939] There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended.

SEC. 430. [30 U.S.C. 940] The amendments made by the Black Lung Benefits Act of 1972[32],, [33] the Black Lung Benefits Reform Act of 1977[34] and the Black Lung Benefits Amendments of 1981[35] to part B of this title shall, to the extent appropriate, also apply to part C of this title.

SEC. 431. [30 U.S.C. 941] Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this title shall be ~~guilty of~~ a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

SEC. 432. [30 U.S.C. 942] (a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.

SEC. 433. [30 U.S.C. 943] (a) The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 422.

(b) The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

(c)(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 422, under which the Black Lung Compensation Insurance Fund established under subsection (a) (hereinafter in this section referred to as the "insurance fund") shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 423 with respect to the risks covered by such agreement.

(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 422.

(d) The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including—

(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

(3) appropriate premiums for different classifications of operators or facilities;

(4) appropriate loss deductibles;

(5) experience rating; and

---

[32] P.L. 92-303 (86 Stat. 150), approved May 19, 1972.

[33] As in original. One comma should be deleted.

[34] See footnote 2.

[35] P.L. 97-119 (95 Stat. 1635, 1643), §201(a), approved December 29, 1981.

(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

(e) The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

(f)(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e), and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

(3) All premiums received by the Secretary shall be paid into the insurance fund.

(g)(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i).

(2) The insurance fund shall be credited with—

(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

(h) The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

(i) There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g). All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 3 of the Black Lung Benefits Revenue Act of 1977[36].

SEC. 434. [30 U.S.C. 944] Any individual whose claim for benefits under this title is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.

SEC. 435. (a) [30 U.S.C. 945] (1) The Secretary of Health, Education, and Welfare shall promptly notify each claimant who has filed a claim for benefits under part B of this title and whose claim is either pending on the effective date of this section or has been denied on or before that effective date, that, upon the request of the claimant, the claim shall be either—

---

[36] P.L. 95-227 (92 Stat. 11), approved February 10, 1978.

(A) reviewed by the Secretary of Health, Education, and Welfare under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977[37]; or

(B) referred directly by the Secretay of Health, Education, and Welfare to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977[38].

(2)(A) The Secretary of Health, Education, and Welfare shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this title, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Secretary of Health, Education, and Welfare shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(B)(i) The Secretary of Health, Education, and Welfare shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.

(ii) The Secretary of Health, Education, and Welfare shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).

(C) Upon the completion of the review of any claim by the Secretary of Health, Education, and Welfare under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).

(3)(A) Except as provided in this section, the Secretary of Labor shall treat each cliam referred by the Secretary of Health, Education, and Welfare under paragraph (1)(B) or (2)(B) as if it were a claim filed under this part. The provisions of subsection (b) shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

(B) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims referred to the Secretary of Labor under this subsection.

(4) For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.

(b)(1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 415) on or before the effective date of this subsection, and each claim which is pending under this part (or under section 415) on such effective date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977[39]. The Secretary shall approved any such claim forthwith if the provisions of this part, as so amended require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(2)(A) The Secretary, in carrying out the review of any claim under paragraph (1) and in making any determination under subsection (a)(3), shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977[40].

(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

(c) Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.

[*Internal Reference.*—Social Security Administration Regulations No. 10 (20 CFR 410.101 - 410.707) relate to the provisions of Part B of title IV of P.L. 91-173.]

---

[37] See footnote 2.
[38] See footnote 2.
[39] See footnote 2.
[40] See footnote 2.

P.L. 91-230, Approved April 13, 1970 (84 Stat. 121)
[Education Assistance Programs]

* * * * * * *

TITLE VI—EDUCATION OF THE HANDICAPPED

PART A—GENERAL PROVISIONS

SHORT TITLE: STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. [20 U.S.C. 1400] (a) This title may be cited as the "Education of the Handicapped Act".

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

DEFINITIONS

SEC. 602. [20 U.S.C. 1401] (a)[1] As used in this title—

* * * * * * *

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

* * * * * * *

---

[1] P.L. 98-199, §2(6), inserted "(a)".

SEC. 613. [20 U.S.C. 1413]

* * * * * * *

(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for handicapped children within the State; and[2]

* * * * * * *

SEC. 671. [20 U.S.C. 1471]

* * * * * * *

(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance its capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to handicapped infants, toddlers, and their families.[3] [4]

* * * * * * *

SEC. 681. [20 U.S.C. 1481]

* * * * * * *

(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.[5] [6]

* * * * * * *

[*Internal Reference.*—Social Security Act §1915(c)(5)(C)(i) cites §602(16) and (17) of the Education of the Handicapped Act.]

P.L. 91-373, Approved August 10, 1970 (84 Stat. 695)
Employment Security Amendments of 1970

* * * * * * *

TITLE II—FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SHORT TITLE

SEC. 201. [26 U.S.C. 3304 note] This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970".

---

[2] P.L. 99-457, §203(b)(3), added subsection (e).

[3] P.L. 99-457, §101(a), added §671(b).

[4] P.L. 99-457, §101(b)(1), provides:

"(b) STUDY OF SERVICES; COORDINATION OF ACTIONS.—(1) The Secretary of Education and the Secretary of Health and Human Services shall conduct a joint study of Federal funding sources and services for early intervention programs currently available and shall jointly act to facilitate interagency coordination of Federal resources for such programs and to ensure that funding available to handicapped infants, toddlers, children, and youth from Federal programs, other than programs under the Education of the Handicapped Act, is not being withdrawn or reduced.".

[5] P.L. 99-457, §101(a), added §681(b).

[6] See footnote 4.

PAYMENT OF EXTENDED COMPENSATION

State Law Requirements

SEC. 202. [26 U.S.C. 3304 note] (a)(1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide that payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—

(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c[1]) or fails to apply for any suitable work to which he was referred by the State agency; or

(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.[2]

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(i) begins with the week following the week in which such failure occurs, and

(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c)[3] for his benefit year.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

(i) if the gross average weekly remuneration payable to such indiivdual for the position does not exceed the sum of—

(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C) for his benefit year, plus

(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

---

[1] As in original. Should be "(C)".

[2] P.L. 98-21, §522(a), amended clause (ii) in its entirety.

[3] As in original. Should be "(b)(1)(C)".

(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

(iv) if the position pays wages less than the higher of—

(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) any applicable State or local minimum wage.

(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide for referring applicants for benefits under this Act to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.[4]

(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1 1/2 times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one of the foregoing methods of measuring employment and earnings shall be used in that State.

(6) No payment shall be made under this Act to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4), and (5), extended compensation would not have been payable to such individual for such week.

Individual's Compensation Accounts

(b)(1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

(B) thirteen times his average weekly benefit amount, or

(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect

(c)(1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

(B) an extended benefit period is not in effect for such week in such State.

---

[4] See P.L. 96-499, §1025, with respect to withholding certification of State unemployment laws, in Vol. II, p. 643.

(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection.

EXTENDED BENEFIT PERIOD

Beginning and Ending

SEC. 203. [26 U.S.C. 3304 note] (a) For purposes of this title, in the case of any State, an extended benefit period—

(1) shall begin with the third week after the first week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is a State "off" indicator.

Special Rules

(b)(1) In the case of any State—

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

Eligibility Period

(c) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

State "On" and "Off" Indicators

(d) For purposes of this section—

(1) There is a State "on" indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 5 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure "5" contained in subparagraph (B) thereof were "6"; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

Rate of Insured Unemployment; Covered Employment

(e)(1) For purposes of subsection (d), the term "rate of insured unemployment" means the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

(B) the average monthly covered employment for the specified period.

(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

PAYMENTS TO STATES

Amount Payable

SEC. 204. [26 U.S.C. 3304 note] (a)(1) There shall be paid to each State an amount equal to one-half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) of the Trade Act of 1974, or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1954 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

Sharable Extended Compensation

(b) For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

Sharable Regular Compensation

(c) For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

Payment on Calendar Month Basis

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Certification

(e) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

Definitions

SEC. 205 [26 U.S.C. 3304 note] For purposes of this title—

(1) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(2) The term "regular compensation" means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

(3) The term "extended compensation" means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

(4) The term "additional compensation" means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(5) The term "benefit year" means the benefit year as defined in the applicable State law.

(6) The term "base period" means the base period as determined under applicable State law for the benefit year.

(7) The term "Secretary" means the Secretary of Labor of the United States.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(9) The term "State agency" means the agency of the State which administers its State law.

(10) The term "State law" means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1954.

(11) The term "week" means a week as defined in the applicable State law.

* * * * * * *

EFFECTIVE DATES

SEC. 207 [26 U.S.C. 3304 note] (a) Except as provided in subsection (b)—

(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1954, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act.

(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State "on" indicator and the State "off" indicator.

(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

(c) Section 3304(a)(11) of the Internal Revenue Code of 1954 (as added by section 206) shall not be a requirement for the State law of any State—

(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

* * * * * * *

[*Internal References.*—Social Security Act §905(c) cites § 204(e) and §1202(b)(3)(C)(ii) cites §203 of the Federal-State Extended Unemployment Compensation Act of 1970, and §905(d) cites the Federal-State Extended Unemployment Compensation Act of 1970.]

P.L. 91-646, Approved January 2, 1971 (84 Stat. 1894)

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

* * * * * * *

TITLE I—GENERAL PROVISIONS

SEC. 101. [42 U.S.C. 4601]

* * * * * * *

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of section 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

* * * * * * *

TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF POLICY

SEC. 201. [42 U.S.C 4621] The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

MOVING AND RELATED EXPENSES

SEC. 202. [42 U.S.C. 4622] (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. [42 U.S.C. 4623] (a) (1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

PLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. [42 U.S.C. 4624] In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

* * * * * * *

PAYMENTS NOT TO BE CONSIDERED AS INCOME

Sec. 216. [42 U.S.C. 4636] No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

* * * * * * *

[*Internal References.*—Social Security Act §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), and 1612(b) have footnotes referring to P.L. 91-646.]

P.L. 91-648, Approved January 5, 1971 (84 Stat. 1909)

Intergovernmental Personnel Act of 1970

* * * * * * *

Sec. 202. [42 U.S.C. 4722] (a) The United States Civil Service Commission (hereinafter referred to as the "Commission") is authorized to make grants to a State for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the Governor of that State that the programs or projects contained within the State's application are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 2 of this Act, to strengthen personnel administration in that State government or in local governments of that State. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

* * * * * * *

TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES

Sec. 208. [42 U.S.C. 4728] (a) There are hereby transferred to the Commission all functions, powers, and duties of—

(1) the Secretary of Agriculture under section 10(e)(2) of the Food Stamp Act of 1964 (7 U.S.C. 2019(e)(2));

(2) the Secretary of Labor under—

(A) the Act of June 6, 1933, as amended (29 U.S.C. 49 et seq.); and

(B) section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1));

(3) the Secretary of Health, Education, and Welfare under—

(A) sections 134(a)(6) and 204(a)(6) of the Mental Retardation Facilities and Community Health Centers Construction Act of 1963 (42 U.S.C. 2674(a)(6) and 2684(a)(6));

(B) section 303(a)(6) of the Older Americans Act of 1965 (42 U.S.C. 3023(a)(6));

(C) sections 314(a)(2)(F) and (d)(2)(F) and 604(a)(8) of the Public Health Service Act (42 U.S.C. 246(a)(2)(F) and (d)(2)(F) and 291d(a)(8)); and

(D) sections 2(a)(5)(A), 302(a)(5)(A), 505(a)(3)(A), 1002(a)(5)(A), 1402(a)(5)(A), 1602(a)(5)(A), and 1902(a)(4)(A) of the Social Security Act (42 U.S.C.

302(a)(5)(A), 602(a)(5)(A), 705(a)(3)(A), 1202(a)(5)(A), 1352(a)(5)(A), 1382(a)(5)(A), and 1396a(a)(4)(A)); and

(4) any other department, agency, office, or officer (other than the President) under any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program;

insofar as the functions, powers, and duties relate to the prescription of personnel standards on a merit basis.

(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall—

(1) include the merit principles in section 2 of this Act;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) The Commission shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Commission under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants or financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Commission considers will most effectively carry out the purpose of this title.

(d) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Commission by this section as the Director of the Management and Budget shall determine shall be transferred to the Commission at such time or times as the Director shall direct.

(e) Personnel standards prescribed by Federal agencies under laws and regulations referred to in subsection (a) of this section shall continue in effect until modified or superseded by standards prescribed by the Commission under subsection (a) of this section.

(f) Any standards or regulations established pursuant to the provisions of this section shall be such as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own individual systems of personnel administration.

(g) Nothing in this section or in section 202 or 203 of this Act shall be construed to—

(1) authorize any agency or official of the Federal Government to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee;

(2) authorize the application of personnel standards on a merit basis to the teaching personnel of educational institutions or school systems;

(3) prevent participation by employees or employee organizations in the formulation of policies and procedures affecting the conditions of their employment, subject to the laws and ordinances of the State or local government concerned;

(4) require or request any State or local government employee to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears;

(5) require or request any State or local government employee, or any person applying for employment as a State or local government employee, to submit to any interrogation or examination or to take any psychological test or any polygraph test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters; or

(6) require or request any State or local government employee to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(h) Effective one year after the date of the enactment of the Civil Service Reform Act of 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

(3) the Davis-Bacon Act[1] (40 U.S.C. 276 et seq.); and

(4) chapter 15 of title 5, United States Code, relating to political activities of certain State and local employees.

* * * * * * *

[*Internal References.*—Social Security Act §§2(a)(5)(A), 303(a)(1), 1002(a)(5)(A), 1402(a)(5)(A), 1602(a)(5)(A)(State), and 1902(a)(4)(A) have footnotes referring to P.L. 91-648.]

P.L. 92-203, Approved December 18, 1971 (85 Stat. 688)

Alaska Native Claims Settlement Act

* * * * * * *

SEC. 2 [43 U.S.C. 1601] Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

* * * * * * *

SEC. 3 [43 U.S.C. 1602] For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

* * * * * * *

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

* * * * * * *

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

* * * * * * *

SEC. 7 [43 U.S.C. 1606] * * *

(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

(h)(1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after the date of enactment of this Act the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: *Provided*, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support or by stockholder who is a member of a professional organization, association, or board which limits the ability of that stockholder to practice his profession because of holding stock issued under this Act.

---

[1] See P.L. 71-798, Vol. II, p. 217.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after the date of enactment of this Act such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

(3)(A) On December 18, 1991, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued to each stockholder share for share subject only to such restrictions as may be provided by the articles of incorporation of the corporation, or agreements between corporations and individual shareholders.

(B) If adopted by December 18, 1991, restrictions provided by amendment to the articles of incorporation may include, in addition to any other legally permissible restrictions—

(i) the denial of voting rights to any holder of stock who is not a Native, or a descendant of a Native, and

(ii) the granting to the corporation, or to the corporation and a stockholder's immediate family, on reasonable terms, the first right to purchase a stockholder's stock (whether issued before or after the adoption of the restriction) prior to the sale or transfer of such stock (other than a transfer by inheritance) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance.

(C) Notwithstanding any provision of Alaska law to the contrary—

(i) any amendment to the articles of incorporation of a regional corporation to provide for any of the restrictions specified in clause (i) or (ii) of subparagraph (B) shall be approved if such amendment receives the affirmative vote of the holders of a majority of the outstanding shares entitled to be voted of the corporation, and

(ii) any amendment to the articles of incorporation of a Native Corporation which would grant voting rights to stockholders who were previously denied such voting rights shall be approved only if such amendment receives, in addition to any affirmative vote otherwise required, a like affirmative vote of the holders of shares entitled to be voted under the provisions of the articles of incorporation.

* * * * * * *

SEC. 8 [43 U.S.C. 1607] * * *

(c) The provisions concerning stock alienation, annual audit, and transfer of stock ownership on death or by court decree provided for regional corporations in section 7, including the provisions of section 7(h)(3), shall apply to Village Corporations[1] Urban Corporations and Native Groups; except that audits need not be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives or to the Committee on Energy and Natural Resources of the Senate.

* * * * * * *

RELATION TO OTHER PROGRAMS

SEC. 29 [43 U.S.C. 1626] (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964[2] (78 Stat. 703), as amended, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded.

* * * * * * *

[*Internal References.*—Social Security Act §428(c)(2) cites the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688); §1613(a)(5) cites §7(h) and §8(c) of the Alaska Native Claims Settlement Act.]

---

[1] As in original. Probably should be followed by a comma.

[2] P.L. 88-525.

P.L. 92-318, Approved June 23, 1972 (86 Stat. 235)
Education Amendments of 1972

* * * * * * *

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. [20 U.S.C. 1681] (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is

limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided,* That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

FEDERAL ADMINISTRATIVE ENFORCEMENT

Sec. 902. [20 U.S.C. 1682] Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

JUDICIAL REVIEW

Sec. 903. [20 U.S.C. 1683] Any department or agency action taken pursuant to section 1002 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

Sec. 904. [20 U.S.C. 1684] No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

EFFECT ON OTHER LAWS

SEC. 905. [20 U.S.C. 1685] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

SEC. 907. [20 U.S.C. 1686] Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

* * * * * * *

[*Internal Reference.*—Social Security Act §508(a)(1) cites title IX of the Education Amendments of 1972.]

P.L. 92-336, Approved July 1, 1972 (86 Stat. 406)

[Public Debt Limit—Extension]

* * * * * * *

SEC. 201.

* * * * * * *

(h) * * *

(2) [42 U.S.C. 403 note] In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.

* * * * * * *

[*Internal Reference.*—Social Security Act §1902(a)(end) cites Public Law 92-336.]

P.L. 92-463, Approved October 6, 1972 (86 Stat. 770)

Federal Advisory Committee Act

* * * * * * *

FINDINGS AND PURPOSES

SEC. 2. [5 U.S.C. App. §2] (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequ E and C1 (i.e., $159.90 × 2) plus the partial benefit ($32.) due C2 after charging his excess earnings. Both of these totals are less than the applicable family maximum.

DEFINITIONS

SEC. 3. [5 U.S.C. App. §3] For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. [5 U.S.C. App. §4] (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. [5 U.S.C. App. §5] (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. [5 U.S.C. App. §6] (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. [5 U.S.C. App. §7] (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. [5 U.S.C. App. §8] (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. [5 U.S.C. App. §9] (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. [5 U.S.C. App. §10] (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairmen of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.[1] Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. [5 U.S.C. App. §11] (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. [5 U.S.C. App. §12] (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

---

[1] P.L. 94-409, §5(c), deleted "Subsections (a)(1) and (a)(3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552(b) of title 5, United States Code." and substituted this sentence, effective March 12, 1977.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. [5 U.S.C. App. §13] Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. [5 U.S.C. App. §14] (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

SEC. 15. [5 U.S.C. App. §15] Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

* * * * * * *

[*Internal References.*—Social Security Act §1886(e)(6)(C)(end) cites §10(a)(1) of the Federal Advisory Committee Act. The catchlines to SSAct §§706 and 1114 have footnotes referring to P.L. 92-463.]

P.L. 92-603, Approved October 30, 1972 (86 Stat. 1329)
Social Security Amendments of 1972

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT

SEC. 101. * * *

(f) [42 U.S.C. 415 note] Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act where applicable, to such difference.

* * * * * * *

INCREASED WIDOW'S AND WIDOWER'S INSURANCE BENEFITS

SEC. 102. * * *

(g) [42 U.S.C. 402 note] (1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act as if the amendments made by this section had been in effect for the first month of such individual's entitlement to such benefits.

(2) For purposes of paragraph (1)—

(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

(B) any deductions under subsections (b) and (c) of section 203 of such Act, applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act (as amended by this Act).

(h) [42 U.S.C.402 note] Where—

(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act for December 1972 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202, and

(2) one or more such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1973, and

(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1972 shall in no case be less after the application of this section and such section 203(a) than the amount it would have been without the application of this section.

* * * * * * *

AGE-62 COMPUTATION POINT FOR MEN

SEC. 104. * * *

(j) * * *

(2) [42 U.S.C. 414 note] In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly benefits under title II of the Social Security Act for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

(3) [42 U.S.C. 414 note] (A) In the case of a man who attains or will attain age 62 in 1973, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "64".

(B) In the case of a man who attains or will attain age 62 in 1974, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "63".

* * * * * * *

ACCEPTANCE OF MONEY GIFTS MADE UNCONDITIONALLY TO SOCIAL SECURITY

SEC. 132. * * *

(g) [42 U.S.C. 401 note] For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the

Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act, shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.

* * * * * * *

DEMONSTRATIONS AND REPORTS; PROSPECTIVE REIMBURSEMENT; EXTENDED CARE; INTERMEDIATE CARE AND HOMEMAKER SERVICES; AMBULATORY SURGICAL CENTERS; PHYSICIANS' ASSISTANTS; PERFORMANCE INCENTIVE CONTRACTS[1]

SEC. 222. (a) [42 U.S.C. 1395b-1 note] (1) The Secretary of Health, Education, and Welfare, directly or through contracts with, or grants to, public or private agencies or organizations, shjall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act and under State plans approved under title XIX of such Act, including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

---

[1] See P.L. 96-499, §903(c) with respect to a limitation on the number of demonstration projects.

See P.L. 99-509, "Omnibus Budget Reconciliation Act of 1986", §9307(b) with respect to the Massachusetts medicare repayment; Vol. II, p. 777.

(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.

* * * * * * *

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

SEC. 226. * * *

(b) [42 U.S.C. 1395mm note] (1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act, any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act for individuals who are members of such organizations.

(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act, with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act.

* * * * * * *

PAYMENT FOR DURABLE MEDICAL EQUIPMENT UNDER MEDICARE

SEC. 245. [42 U.S.C. 1395x note] (a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act.

(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.

* * * * * * *

ADVANCES FROM OASI TRUST FUND FOR ADMINISTRATIVE EXPENSES

SEC. 305. * * *

(b) [42 U.S.C. 401 note] (1) Sums appropriated pursuant to section 1601 of the Social Security Act shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act, to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) on account of the costs of administration of title XVI of such Act (as added by section 301 of this Act).

(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a)[2] shall cease to be effective at the close of the fiscal year following such fiscal year.

(3) As used in this subsection, the term "Trust Funds" has the meaning given it in section 201(g)(1)(A) of the Social Security Act.

• • • • • • •

LIMITATION ON FISCAL LIABILITY OF STATES FOR OPTIONAL STATE SUPPLEMENTATION[3]

SEC. 401. [42 U.S.C. 1382e note] (a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

(B) the benefits under title XVI of the Social Security Act (subject to the second sentence of this paragraph) (subject to the second sentence of this paragraph)[4], plus income not excluded under section 1612(b) of such Act in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977, and before July 1, 1979. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.

(b) [42 U.S.C. 1382e note] (1) For purposes of subsection (a), the term "adjusted payment level under the appropriate approved plan of a State as in effect for January 1972" means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X,

---

[2] P.L. 92-603, §305, was enacted and became effective October 30, 1972.

[3] See P.L. 93-233, §8(d), with respect to cash payments in lieu of food stamps to recipients of SSI benefits, in Vol. II, p. 557.

[4] As in original.

XIV, or XVI of the Social Security Act, as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plans.

(2) For purposes of paragraph (1), the term "payment level modification" with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act.

(3) For purposes of paragraph (1), the term "bonus value of food stamps in a State for January 1972" (with respect to an individual) means—

(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 for January 1972, reduced by

(B) the charge which such an individual would have paid for such coupon allotment,

if the income of such individual, for purposes of determining the charge it would have paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

(c) For purposes of this section, the term "non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act" means the difference between—

(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act, under section 1118 of such Act, and under section 9 of the Act of April 19, 1950, for such State with respect to such expenditures in such quarters.

(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.

* * * * * * *

[*Internal References.*—Social Security Act §§202(e)(6) and (f)(7) cite §102(g); §215(b)(2)(B)(iii) cites §104(j)(2); §1101(a)(1) cites §301; §1814(b)(3) cites §222; §§1875(b) and 1886(c)(4)(B) cite §222(a); and §1875(b) also cites §226 of the Social Security Amendments of 1972. Social Security Act titles I, VI, X, XIV, and XVI (State), and §1616(d) have footnotes referring to P.L. 92-603.]

P.L. 93-66, Approved July 9, 1973 (87 Stat. 152)

[Cost-of-Living Increase in Social Security Benefits]

* * * * * * *

SEC. 203. * * *

(f) [42 U.S.C. 415 note] Effective June 1, 1974, the Secretary of Health, Education, and Welfare, shall prescribe and publish in the Federal Register such modifications and extensions in the table contained in section 215(a) of the Social Security Act (which shall be determined in the same manner as the revisions in such table provided for under section 215(i)(2)(D) of such Act) as may be necessary to reflect the amendments made by this section; and such modified and extended table shall be deemed to be the table appearing in such section 215(a).

* * * * * * *

SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS

SEC. 211. [42 U.S.C. 1382 note] (a)(1) In determining (for purposes of title XVI of the Social Security Act, as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act, shall each be increased by $876 for each such essential person, and

(B) the income and resources of such individual shall (for purposes of such title XVI) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

(C) does not but would (except for the provisions of subparagraph (B)) meet—

(i) the criteria established with repect to income in section 1611(a) of such Act, or

(ii) the criteria established with respect to resources by such section 1611(a) (or, if applicable, by section 1611(g) of such Act).

(2) The provisions of section 1611(g) of the Social Security Act (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid of assistance referred to in subsection (b)(1).

(b) For purposes of this section, an individual shall be a "qualified individual" only if—

(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act, and

(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

(A) was living in the home of such individual, and

(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

(c) The term "essential person", when used in connection with any qualified individual, means a person who—

(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

(2) lives in the home of such individual,

(3) is not eligibie (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act (as in effect after December 1973), and

(4) is not the eligible spouse (as that term is used in such title XVI) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SSI BENEFITS PROGRAM

SEC. 212. [42 U.S.C. 1382 note] (a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX, with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act, as enacted by section 301 of the Social Security Amendments of 1972[1]), and

(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act)

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

(C) the month in which such individual dies, or

(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act by reason of the provisions of section 1611(e)(1)(A), (2), or (3), 1611(f), or 1615(c) of such Act.

(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's "December 1973 income" (as determined under subparagraph (B)) exceeds the amount of such individual's "title XVI benefit plus other income" (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

(B) For purposes of subparagraph (A), an individual's "December 1973 income" means an amount equal to the aggregate of—

(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92-603, if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act, and (II) the level of which has been found by the Secretary pursuant to section 8 of Public Law 93-233 to have been specifically increased so as to include the bonus value of food stamps, and

(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

(C) For purposes of subparagraph (A), the amount of an individual's "title XVI benefit plus other income" for any month means an amount equal to the aggregate of—

(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act, and

(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

---

[1] P.L. 92-603 (86 Stat. 1329), approved October 30, 1972.

(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act, such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act, and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.[2]

(4) Any State having an agreement with the Secretary under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act, or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).[3]

(b)(1) Any State having an agreement with the Secretary under subsection (a) may enter into an administration agreement with the Secretary whereby the Secretary will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

(2) Any such administration agreement between the Secretary and a State entered into under this subsection shall provide that the State will (A) certify to the Secretary the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act, together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Secretary with such additional data at such times as the Secretary may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

(3) Any State which has entered into an administration agreement under this subsection shall, at such times and in such installments as may be agreed upon between the Secretary and the State, pay to the Secretary an amount equal to the expenditures made by the Secretary as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a).

(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act (as so in effect).

(2) Supplementary payments made by the Secretary (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972, be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Secretary, the provisions of subsection (b) of such section 401.

(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Secretary under section 1616 of the Social Security Act under which—

---

[2] See P.L. 94-566, §503, for the situation in which payments under this subsection are deemed to be benefits under title XVI of the Social Security Act, in Vol. II, p. 595.

[3] P.L. 96-265, §201(b)(2), added paragraph (4), effective January 1, 1981, but only for a period of three years after that effective date.

P.L. 98-460, §14(a), amended that effective date by striking out "for a period of three years after such effective date" and substituting "through June 30, 1987", effective October 9, 1984.

P.L. 99-643, §2, amended that effective date by striking out ", but shall remain in effect only through June 30, 1987".

See P.L. 96-265, §201(e), with respect to the maintenance of separate accounts in Vol. II, p. 633.

(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

(e) Except as the Secretary may be regulations otherwise provide, the provisions of title XVI of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title, relating to the terms and conditions under which the benefits authorized by such title are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Secretary by such title may, where appropriate, be exercised by him in the administration of this section.

(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act.

* * * * * * *

COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

Sec. 230. [42 U.S.C. 1396a note] In the case of any State plan (approved under title XIX of the Social Security Act) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act, there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

(1) the individual (referred to in the last sentence of section 1905(a) of such Act) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

PERSONS IN MEDICAL INSTITUTIONS

Sec. 231. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for all (or any part of) the month of December 1973—

(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act, and

(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act, and

(B),[4] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

---

[4] As in original.

(4) such individual is determined (under the utilization review and other professional audit procedures appliable to State plans approved under title XIX of the Social Security Act) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

SEC. 232. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for the month of December 1973 was eligible for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act), shall be deemed for purposes of title XIX to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

* * * * * * *

[*Internal References.*—Social Security Act §§228(d)(end), 1617(b), and 1905(k) cite §211; §§1617(a)(1) and (c)(1) and 1618(e)(1)(A) and (B) cite §211(a)(1)(A); §1618(f) cites §211(a); §§1619(b)(ii), 1631(g)(2), and 1905(q)(1)(A)(ii) cite §212; §§1618(a), 1631(b)(1)(B)(ii) and (e)(1)(B), 1634(b)(4) and 1921(b)(2) cite §212(a); §§1127(b), 1620(b)(2) and 1631(i)(2) cite §212(b); §1921(a)(5)(A) cites §230; §1921(a)(5)(B) cites §231; and §1921(a)(5)(C) cites §232 of Public Law 93-66. Social Security Act §§1611 (catchline) and 1902(a)(10)(end) have footnotes referring to P.L. 93-66.]

P.L. 93-86, Approved August 10, 1973 (87 Stat. 221)

Agriculture and Consumer Protection Act of 1973

* * * * * * *

SEC. 4. [7 U.S.C. 612c note] (a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1986, 1987, 1988, 1989, and 1990[1], purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, supplemental feeding programs wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under[2] so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24, 1935 (7 U.S.C. 612c),[3] section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1) or the Temporary[4] Emergency Food Assistance Act of 1983[5], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

---

[1] P.L. 99-198, §1562(a)(1), struck out "1982, 1983, 1984, and 1985" and substituted "1986, 1987, 1988, 1989, and 1990".

[2] P.L. 99-198, §1562(a)(2), struck out "under 18 years of age" and substituted "18 years of age and under".

[3] P.L. 98-8, §207(1), struck out "or".

[4] P.L. 98-92, §3, inserted "Temporary".

[5] P.L. 98-8, §207(2), inserted "or the Emergency Food Assistance Act of 1983".

* * * * * * *

[*Internal Reference.*—Social Security Act §1920(b)(2)(D)(ii)(II) cites section 4(a) of the Agriculture and Consumer Protection Act of 1973.]

P.L. 93-112, Approved September 26, 1973 (87 Stat. 355)
Rehabilitation Act of 1973

* * * * * * *

TITLE I—VOCATIONAL REHABILITATION SERVICES

PART A—GENERAL PROVISIONS

DECLARATION OF PURPOSE: AUTHORIZATION OF APPROPRIATIONS

Sec. 100. [29 U.S.C. 720] (a) The purpose of this title is to authorize grants to assist States to meet the current and future needs of individuals with handicaps[1], so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

(b)(1)(A) For the purpose of making grants to States under part B of this title (other than grants under section 112) to assist States in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 101, there is authorized to be appropriated $1,281,000,000 for fiscal year 1987 and the amount determined under subsection (c) for each of the fiscal years 1988, 1989, 1990, and 1991. The amount determined under subsection (c) for each fiscal year shall be based upon the amount authorized by this subsection, or the amount appropriated for this subsection, whichever is higher, plus the amount of the Consumer Price Index addition determined under subsection (c) for the immediately preceding fiscal year.

(B) In addition, there are authorized to be appropriated for such purpose such additional sums as may be necessary for each of the fiscal years 1987 through 1991. Any such sums shall be allocated in accordance with section 110(a)(4).

(C) In no event may the amount appropriated for the purpose of making grants to States under part B of this title (other than section 112) be more than $1,281,000,000 for fiscal year 1987, $1,409,100,000 for fiscal year 1988, $1,550,010,000 for fiscal year 1989, $1,705,011,000 for fiscal year 1990, and $1,875,512,100 for fiscal year 1991.[2]

(2) For the purpose of allotments under section 120(a)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.[3]

(3) For the purpose of making grants to Indian tribes under part D of this title, there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986[4], in addition to any other amounts authorized to be appropriated under this section, such sums as may be necessary for such fiscal year, but not more than an amount equal to 1 percent of the amount appropriated for that fiscal year under paragraph (1) of this subsection.

(c)(1) No later than November 15 of each fiscal year (beginning with the fiscal year 1979), the Secretary of Labor shall publish in the Federal Register the percentage change in the price index published for October of the preceding fiscal year and October of the fiscal year in which such publication is made.

(2)(A) If in any fiscal year the percentage change published under paragraph (1) indicates an increase in the price index, then the amount authorized to be appropriated under subsection (b)(1) for the subsequent fiscal year is the amount authorized to be appropriated for the fiscal year in which the publication is made under paragraph (1) increased by such percentage change.

---

[1] P.L. 99-506, §103(d)(2)(C), struck out "handicapped individuals" and substituted "individuals with handicaps".

[2] P.L. 99-506, §201(a), amended paragraph (1) in its entirety.

[3] P.L. 99-506, §201(b), amended paragraph (2).

[4] P.L. 98-221, §111(c), struck out "the fiscal year ending September 30, 1979, and for each of the three fiscal years thereafter" and substituted "each of the fiscal years 1984, 1985, and 1986".

(B) If in any fiscal year the percentage change published under paragraph (1) does not indicate an increase in the price index, then the amount authorized to be appropriated under subsection (b)(1) for the subsequent fiscal year is the amount authorized to be appropriated for the fiscal year in which the publication is made under paragraph (1).

(3) For purposes of this subsection, the term "price index" means the Consumer Price Index for All Urban Consumers, published monthly by the Bureau of Labor Statistics.

(d)(1) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(A) of the authorization of appropriations for the program authorized by the State grant program under part B of this title; or

(B) of the duration of the program authorized by the State grant program under part B of this title;

either—

(i) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(ii) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;

such authorization or duration is automatically extended for one additional fiscal year for the program authorized by this title. The amount appropriated for the additional year shall be the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated based upon the amount authorized for fiscal year 1991[5] and the amount authorized under subsection (c).

(2)(A) For the purpose of subdivision (i) of paragraph (1), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(B) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of the program authorized by this title, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of paragraph (1) of this subsection which follows subdivision (ii) of paragraph (1) is in operation.[6]

STATE PLANS

SEC. 101. [29 U.S.C. 721] (a) In order to be eligible to participate in programs under this title, a State shall submit to the Commissioner a State plan for vocational rehabilitation services for a three-year period and, upon request of the Commissioner, shall make such annual revisions in the plan as may be necessary. Each such plan shall—

(1)(A) designate a State agency as the sole State agency to administer the plan, or to supervise its administration by a local agency, except that (i) where under the State's law the State agency for the blind or other agency which provides assistance or services to the adult blind, is authorized to provide vocational rehabilitation services to such individuals, such agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency with respect to the rest of the State plan, and (ii) the Commissioner, upon the request of a State, may authorize such agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit such agencies to carry out a joint program to provide services to individuals with handicaps[7], and may waive compliance with respect to vocational rehabilitation services furnished under such programs with the requirement of clause (4) of this subsection that the plan be in effect in all political subdivisions of that State;

(B) provide that the State agency so designated to administer or supervise the administration of the State plan, or (if there are two State agencies designated under subclause (A) of this clause) to supervise or administer the part of the State plan that does not relate to services for the blind, shall be (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with handicaps[8], (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State;

---

[5] P.L. 99-506, §201(c), struck out "1986" and substituted "1991".
[6] P.L. 98-221, §111(d), added subsection (d).
[7] See footnote 1.
[8] See footnote 1.

(2) provide, except in the case of agencies described in clause (1)(B)(i)—

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with handicaps[9], and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

(B)(i) that such unit shall be located at an organizational level and shall have an organizational status within such State agency comparable to that of other major organizational units of such agency, or (ii) in the case of an agency described in clause (1)(B)(ii), either that such unit shall be so located and have such status, or that the director of such unit shall be the executive officer of such State agency; except that, in the case of a State which has designated only one State agency pursuant to clause (1) of this subsection, such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of such agency, and assign responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of this clause applying separately to each of such units;

(3) provide for financial participation by the State, or if the State so elects, by the State and local agencies to meet the amount of the non-Federal share;

(4) provide that the plan shall be in effect in all political subdivisions, except that in the case of any activity which, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with handicaps[10] or groups of individuals with handicaps[11] the Commissioner may waive compliance with the requirement herein that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by him, but only if the non-Federal share of the cost of such vocational rehabilitation services is met from funds made available by a local agency (including, to the extent permitted by such regulations, funds contributed to such agency by a private agency, organization, or individual);

(5)(A) contain the plans, policies, and methods to be followed in carrying out the State plan and in its administration and supervision, including the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment,[12] a description of the method to be used to expand and improve services to individuals with handicaps[13] with the most severe handicaps including individuals served under part C of title VI of this Act,[14] and a description of the method to be used to utilize existing rehabilitation facilities to the maximum extent feasible; and, in the event that vocational rehabilitation services cannot be provided to all eligible individuals with handicaps[15] who apply for such services, (i) show and provide the justification for[16] the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided, and (ii) show[17] the outcomes and service goals, and the time within which they may be achieved, for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving individuals with handicaps[18], established in regulations prescribed by the Commissioner[19], [20]

---

[9] See footnote 1.

[10] See footnote 1.

[11] See footnote 1.

[12] P.L. 99-506, §202(a)(1)(A), inserted "the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment,".

[13] See footnote 1.

[14] P.L. 99-506, §202(a)(1)(B), inserted "including individuals served under part C of title VI of this Act,".

[15] See footnote 1.

[16] P.L. 99-506, §202(a)(1)(C), struck out "show (i)" and substituted "(i) show and provide the justification for".

[17] P.L. 99-506, §202(a)(1)(D), inserted "show".

[18] See footnote 1.

[19] As in original.

[20] P.L. 99-506, §202(a)(2)(A), struck out "and".

(B) provide satisfactory assurances to the Commissioner that the State has studied and considered a broad variety of means for providing services to individuals with the most severe handicaps; and[21]

(C) describe how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;[22]

(6)(A) provide for such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Commissioner to be necessary for the proper and efficient administration of the plan (including a requirement that the State agency and facilities in receipt of assistance under this title shall take affirmative action to employ and advance in employment qualified individuals with handicaps[23] covered under, and on the same terms and conditions as set forth in, section 503); and

(B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under the plan will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

(7) contain (A) provisions relating to the establishment and maintenance of personnel standards, which are consistent with any State licensure laws and regulations, including provisions relating to the tenure, selection, appointment, and qualifications of personnel, (B) provisions relating to the establishment and maintenance of minimum standards governing the facilities and qualified[24] personnel utilized in the provision of vocational rehabilitation services, but the Commissioner shall exercise no authority with respect to the selection, method of selection, tenure of office, or compensation of any individual employed in accordance with such provision, and (C) provisions relating to the establishment and maintenance of minimum standards to assure the availability of personnel, to the maximum extent feasible, trained to communicate in the client's native language or mode of communication;

(8) provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) and clause (12) of section 103(a), and for the provision of such other services as are specified under such section after a determination that comparable services and benefits are not available under any other program, except that such determinations shall not be required where it would delay the provision of such services to any individual at extreme medical risk;[25]

(9) provide that (A) an individualized written rehabilitation program meeting the requirements of section 102 will be developed for each individual with handicaps[26] eligible for vocational rehabilitation services under this Act, (B) such services will be provided under the plan in accordance with such program, and (C) records of the characteristics of each applicant will be kept specifying, as to those individuals who apply for services under this title and are determined not to be eligible therefor, the reasons for such determinations in such detail as required by the Commissioner in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 13, and that the State agency will at least annually categorize and analyze such reasons and numbers and report this information to the Commissioner and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 102;

(10) provide that the State agency will make such reports in such form, containing such information (including the data described in subclause (C) of clause (9) of this subsection, periodic estimates of the population of individuals with handicaps[27] eligible for services under this Act in such State, specifications of the number of such individuals who will be served with funds provided under this Act and the outcomes and service goals to be achieved for such individuals in each priority category specified in accordance with clause (5) of this subsection, and the service costs for each such category), and at such time as the Comissioner may require to carry out the functions of the Commissioner[28] under this title, and comply with such provisions as are[29] necessary to assure the correctness and verification of such reports;

---

[21] P.L. 99-506, §202(a)(2)(B), inserted "and".
[22] P.L. 99-506, §202(a)(2)(C), added subparagraph (C).
[23] See footnote 1.
[24] P.L. 99-506, §202(b), inserted "qualified".
[25] P.L. 99-506, §202(c), amended paragraph (8) in its entirety.
[26] P.L. 99-506, §103(d)(2)(B), struck out "handicapped individual" and substituted "individual with handicaps".
[27] See footnote 1.
[28] P.L. 99-506, §1001(b)(1)(A), struck out "his functions" and substituted "the functions of the Commissioner".
[29] P.L. 99-506, §1001(b)(1)(B), struck out "he may find" and substituted "are".

(11) provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for individuals with handicaps[30], veterans programs, community mental health programs,[31] manpower programs, and public employment offices, and the Social Security Administration of the Department of Health and Human Services[32], the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with handicaps[33] (specifically including arrangements for the coordination of services to individuals eligible for services under this Act, the Education of the Handicapped Act, and the Carl D. Perkins[34] Vocational Education Act);

(12)(A) provide satisfactory assurances to the Commissioner that, in the provision of vocational rehabilitation services, maximum utilization shall be made of public or other vocational or technical training facilities or other appropriate resources in the community; and

(B) provide (as appropriate) for entering into agreements with the operators of rehabilitation facilities for the provision of services for the rehabilitation of individuals with handicaps[35];

(13)(A) provide that vocational rehabilitation services provided under the State plan shall be available to any civil employee of the United States disabled while in the performance of his duty on the same terms and conditions as apply to other persons, and

(B) provide that special consideration will be given to the rehabilitation under this Act of a individual with handicaps[36] whose handicapping condition arises from a disability sustained in the line of duty while such individual was performing as a public safety officer and the proximate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities;

(14) provide that no residence requirement will be imposed which excludes from services under the plan any individual who is present in the State;

(15) provide for continuing statewide studies of the needs of individuals with handicaps[37] and how these needs may be most effectively met, including conducting a full needs assessment for serving individuals with severe handicaps and including[38] the capacity and condition of rehabilitation facilities, plans for improving such facilities, and policies for the use thereof by the State agency[39] and review of the efficacy of the criteria employed with respect to ineligibility determinations described in subclause (C) of clause (9) of this subsection with a view toward the relative need for services to significant segments of the population of individuals with handicaps[40] and the need for expansion of services to those individuals with the most severe handicaps;

(16) provide for (A) periodic review and reevaluation of the status of individuals with handicaps[41] placed in extended employment in rehabilitation facilities (including workshops) to determine the feasibility of their employment, or training for employment, in the competitive labor market, and (B) maximum efforts to place such individuals in such employment or training whenever it is determined to be feasible;

(17) provide that where such State plan includes provisions for the construction of rehabilitation facilities—

(A) the Federal share of the cost of construction thereof for a fiscal year will not exceed an amount equal to 10 per centum of the State's allotment for such year,

(B) the provisions of section 306 shall be applicable to such construction and such provisions shall be deemed to apply to such construction, and

(C) there shall be compliance with regulations the Commissioner[42] shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of rehabilitation facilities) because its plan includes such provisions for construction;

---

[30] See footnote 1.

[31] P.L. 99-506, §202(d), inserted "community mental health programs,".

[32] P.L. 98-221, §104(a)(2), struck out ", Education, and Welfare" and substituted "and Human Services".

[33] See footnote 1.

[34] P.L. 98-524, §4(f), inserted "Carl D. Perkins".

[35] See footnote 1.

[36] P.L. 99-506, §103(d)(2)(B), struck out "handicapped individual" and substituted "individual with handicaps". As in original; "a" should be "an".

[37] See footnote 1.

[38] P.L. 99-506, §202(e)(1), struck out "(including" and substituted ", including conducting a full needs assessment for serving individuals with severe handicaps and including".

[39] P.L. 99-506, §202(e)(2), struck out a closing parenthesis.

[40] See footnote 1.

[41] See footnote 1.

[42] As in original.

(18) provide satisfactory assurances to the Commissioner that the State agency designated pursuant to clause (1) (or each State agency if two are so designated) and any sole local agency administering the plan in a political subdivision of the State will take into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups thereof who are recipients of vocational rehabilitation services (or, in appropriate cases, their parents or guardians), personnel working in the field of vocational rehabilitation, and providers of vocational rehabilitation services;

(19) provide satisfactory assurances to the Commissioner that the continuing studies required under clause (15) of this subsection, as well as an annual evaluation of the effectiveness of the program in meeting the goals and priorities set forth in the plan, will form the basis for the submission, from time to time as the Commissioner may require, of appropriate amendments to the plan;

(20) provide satisfactory assurances to the Commissioner that, as appropriate, the State shall actively consult with Indian tribes and tribal organizations and native Hawaiian organizations in the development of the State plan, and that,[43] except as otherwise provided in section 130, the State shall provide vocational rehabilitation services to handicapped American Indians residing in the State to the same extent as the State provides such services to other significant segments of the population of individuals with handicaps[44] residing in the State;

(21) provide that the State agency has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with handicaps[45] under part B of title VI upon a determination by such agency that such profitmaking organizations are better qualified to provide such rehabilitation services than nonprofit agencies and organizations;[46]

(22) provide for the establishment and maintenance of information and referral programs (the staff of which shall include, to the maximum extent feasible, interpreters for the deaf) in sufficient numbers to assure that individuals with handicaps[47] within the State are afforded accurate vocational rehabilitation information and appropriate referrals to other Federal and State programs and activities which would benefit them;[48]

(23)(A) provide satisfactory assurances that in the formulation of policies governing the provision of the rehabilitation services consistent with the State plan, and any revisions, that the State agency conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups and organizations and all segments of the public an opportunity to comment on the State plan, and (B) include a summary of such comments and the State agency's response to such comments;[49]

(24) contain the plans, policies, and methods to be followed to assist in the transition from education to employment related activities; and[50]

(25) provide satisfactory assurances that the State has an acceptable plan for part C of title VI.[51]

(b) The Commissioner shall approve any plan which the Commissioner[52] finds fulfills the conditions specified in subsection (a) of this section, and[53] shall disapprove any plan which does not fulfill such conditions. Prior to such disapproval, the Commissioner shall notify a State of the[54] intention to disapprove its plan, and[55] shall afford such State reasonable notice and opportunity for hearing.

(c)(1) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this section, finds that—

---

[43] P.L. 99-506, §202(f), inserted "as appropriate, the State shall actively consult with Indian tribes and tribal organizations and native Hawaiian organizations in the development of the State plan, and that,".

[44] See footnote 1.

[45] See footnote 1.

[46] P.L. 99-506, §202(g)(1), struck out "and".

[47] See footnote 1.

[48] P.L. 99-506, §202(g)(2), struck out the period and substituted a semicolon.

[49] P.L. 99-506, §202(g)(3), added paragraph (23).

[50] P.L. 99-506, §202(g)(3), added paragraph (24).

P.L. 99-506, §202(h)(1), struck out the period and substituted "; and".

[51] P.L. 99-506, §202(h)(2), added paragraph (25).

[52] P.L. 99-506, §1001(b)(2)(A), struck out "he" and substituted "the Commissioner".

[53] P.L. 99-506, §1001(b)(2)(A), struck out "he".

[54] P.L. 99-506, §1001(b)(2)(B), struck out "his", and substituted "the".

[55] P.L. 99-506, §1001(b)(2)(B), struck out "he".

(A) the plan has been so changed that it no longer complies with the requirements of subsection (a) of this section; or

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan.

The Commissioner shall notify such State agency that no further payments will be made to the State under this title (or, in the discretion of the Commissioner[56], that such further payments will be reduced, in accordance with regulations the Commissioner[57] shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner[58] is satisfied there is no longer any such failure. Until the Commissioner[59] is so satisfied, the Commissioner shall make no further payments to such State under this title (or shall limit payments to projects under those parts of the State plan in which there is no such failure).

(2) The Commissioner may, in accordance with regulations the Commissioner[60] shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of subsection (a). The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contribute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

(d)(1) Any State which is dissatisfied with a final determination of the Commissioner under subsection (b) or (c) may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the thirty-day period beginning on the date notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner[61] for that purpose. In accordance with section 2112 of title 28, United States Code, the Commissioner shall file with the court a record of the proceeding on which the Commissioner[62] based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

(2) If, in an action under this subsection to review a final determination of the Commissioner under subsection (b) or (c), the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within thirty days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

(3)(A) Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction (i) to grant appropriate relief as provided in chapter 7 of title 5, United States Code, except for interim relief with respect to a determination under subsection (c), and (ii) except as otherwise provided in subparagraph (B), to review such determination in accordance with chapter 7 of title 5, United States Code.

(B) Section 706 of title 5, United States Code, shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determination is not supported by substantial evidence in the record of the proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).

---

[56] P.L. 99-506, §1001(b)(3)(A), struck out "his discretion" in the first sentence of (c)(1) and substituted "the discretion of the Commissioner". Executed as if this amendment was made to the second sentence of (c)(1).

[57] As in original.

[58] P.L. 99-506, §1001(b)(3)(A), struck out "he" in the first sentence of (c)(1) and substituted "the Commissioner". Executed as if this amendment was made to the second sentence of (c)(1).

[59] P.L. 99-506, §1001(b)(3)(B), struck out "he" in the second sentence of (c)(1) and substituted "the Commissioner". Executed as if this amendment was made to the third sentence of (c)(1).

[60] As in original.

[61] P.L. 99-506, §1001(b)(4), struck out "him" and substituted "the Commissioner".

[62] P.L. 99-506, §1001(b)(4), struck out "he" and substituted "the Commissioner".

INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM

SEC. 102. [29 U.S.C. 722] (a) The Commissioner shall insure that the individualized written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis, required by section 101(a)(9) in the case of each individual with handicaps[63] is developed jointly by the vocational rehabilitation counselor or coordinator and the individual with handicaps[64] (or, in appropriate cases, such individual's[65] parents or guardians), and that such program meets the requirements set forth in subsection (b) of this section. Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual, and, as appropriate, such specification of reasons for such an ineligibility determination shall set forth the rights and remedies, including recourse to the process set forth in subsection (b)(5) of this section, available to the individual in question.

(b)(1) Each individualized written rehabilitation program shall—

(A) be developed on the basis of a determination of employability designed to achieve the vocational objective of the individual;

(B) include a statement of the long-range rehabilitation goals based on an assessment determined through an evaluation of rehabilitation potential for the individual;

(C) include a statement of the intermediate rehabilitation objectives related to the attainment of such goals based on an assessment determined through an evaluation of rehabilitation potential;

(D) where appropriate, include a statement of the specific rehabilitation engineering services to be provided to assist in the implementation of intermediate objectives and long-range rehabilitation goals for the individual;

(E) include an assessment of the expected need for post-employment services;

(F) include a statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and the anticipated duration of each such service;

(G) include objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved;

(H) provide for a reassessment of the need for post-employment services prior to case closure and, where appropriate, for severely handicapped individuals, the development of a statement detailing how such services shall be provided or arranged through cooperative agreements with other service providers; and

(I) provide a description of the availability of a client assistance project established in such area pursuant to section 112.

(2) Each individualized written rehabilitation program shall be reviewed annually at which time such individual (or in appropriate cases, the parents or guardian of the individual) will be afforded an opportunity to review such program and jointly redevelop and agree to its terms. Each individualized written rehabilitation program shall be revised as needed.[66]

(c) The Commissioner shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 101 in the case of each individual with handicaps[67], emphasis is placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus not eligible for vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate cases, such individual's[68] parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated[69] that such individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section.

(d)(1) Except as provided in paragraph (4), the Director of any designated State unit shall establish procedures for the review of determinations made by the rehabilitation counselor or coordinator under this section, upon the request of an individual with handicaps (or, in appropriate cases, such individual's parents or guardian).

---

[63] See footnote 26.
[64] See footnote 26.
[65] P.L. 99-506, §1001(b)(5)(A), struck out "his" and substituted "such individual's".
[66] P.L. 99-506, §203(a), amended subsection (b) in its entirety.
[67] See footnote 26.
[68] See footnote 65.
[69] P.L. 98-221, §112, struck out "beyond any reasonable doubt".

(2) Such review procedures shall provide an opportunity to such individuals for the submission of additional evidence and information to an impartial hearing officer who shall make a decision based on the provisions of the State plan approved under section 101(a).

(3)(A) Within 20 days of the mailing of the decision to the individual with handicaps (or, in appropriate cases, such individual's parents or guardian), the Director shall notify such individuals of the intent to review such decision in whole or in part.

(B) If the Director decides to review the decision, such individuals shall be provided an opportunity for the submission of additional evidence and information relevant to a final decision.

(C) A final decision shall be made in writing by the Director and shall include a full report of the findings and the grounds for such decision. When a final decision is made, a copy of such decision shall be provided to such individuals.

(D) Except as provided in paragraph (4), the Director may not delegate responsibility to make any such final decision to any other officer or employee of the designated State unit.

(4)(A) A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations under this Act, is authorized to carry out the responsibilities of the Director under this subsection.

(B) The provisions of paragraphs (1) through (3) of this subsection shall not apply to any State to which subparagraph (A) of this paragraph applies.

(5)(A) The Director shall collect data described in subparagraph (B) and prepare and submit to the Commissioner a report containing such data. For the report submitted on or before February 1, 1988, the Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 13.

(B) The data required to be collected under this paragraph shall include—

(1) a description of State procedures for review;

(2) the number of appeals to the independent hearing officer and the State Director, including the type of complaint and the issues involved;

(3) the number of decisions by the State Director reversing in whole or in part the decision of the impartial hearing officer; and

(4) the number of decisions affirming the position of the individual with handicaps assisted through the client assistance program.[70]

SCOPE OF VOCATIONAL REHABILITATION SERVICES

SEC. 103. [29 U.S.C. 723] (a) Vocational rehabilitation services provided under this Act are any goods or services necessary to render an individual with handicaps[71] employable, including, but not limited to, the following:

(1) evaluation of rehabilitation potential, including diagnostic and related services, incidental to the determination of eligibility for, and the nature and scope of services, to be provided, including, where appropriate, evaluation by personnel skilled in rehabilitation engineering technology,[72] examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;

(2) counseling, guidance, referral, and placement services for individuals with handicaps[73], including followup, follow-along, and specific postemployment services necessary to assist such individuals maintain or regain employment, and other[74] services designed to help individuals with handicaps[75] secure needed services from other agencies, where such services are not available under this Act;

(3) vocational and other training services for individuals with handicaps[76], which shall include personal and vocational adjustment, books, and other training materials, and services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals: *Provided,* That no training services in institutions of higher education shall be paid for with funds under this title unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

---

[70] P.L. 99-506, §203(b), amended subsection (d) in its entirety.

[71] P.L. 99-506, §103(d)(2)(A), struck out "a handicapped individual" and substituted "an individual with handicaps".

[72] P.L. 99-506, §204(a), inserted "evaluation by personnel skilled in rehabilitation engineering technology,".

[73] See footnote 1.

[74] P.L. 99-506, §204(b), struck out "other postemployment services necessary to assist such individuals to maintain their employment and" and substituted "specific postemployment services necessary to assist such individuals maintain or regain employment, and other".

[75] See footnote 1.

[76] See footnote 1.

(4) physical and mental restoration services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time, (B) necessary hospitalization in connection with surgery or treatment, (C) prosthetic and orthotic devices, (D) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select, (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from end-stage renal disease, and (F) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;

(5) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

(6) interpreter services for deaf individuals, and reader services for those individuals determined to be blind after an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for individuals with handicaps[77] to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for the blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service;[78]

(11) telecommunications, sensory, and other technological aids and devices; and[79]

(12) rehabilitation engineering services.[80]

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe handicaps the operation of which can be improved by management services and supervision provided by the State agency, the provision of such services and supervision, along or together with the acquisition by the State agency of vending facilities or other equipment and initial stocks and supplies;

(2) the construction or establishment of public or nonprofit rehabilitation facilities and the provision of other facilities (including services offered at rehabilitation facilities) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one individual with handicaps[81];

(3) the use of existing telecommunications systems (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programing[82] to meet the particular needs of individuals with handicaps[83]; and

(4) the use of services providing recorded material for the blind and captioned films or video cassettes for the deaf.

NON-FEDERAL SHARE FOR CONSTRUCTION

SEC. 104. [29 U.S.C. 724] For the purpose of determining the amount of payments to States for carrying out part B of this title (or to an Indian tribe under part D of this title)[84], the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Commissioner, shall include contributions of funds made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of construction or establishment of a public or nonprofit rehabilitation facility, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to construction or establishment of such facility.

---

[77] See footnote 1.
[78] P.L. 99-506, §204(c)(1), struck out "and".
[79] P.L. 99-506, §204(c)(2), struck out the period and substituted "; and".
[80] P.L. 99-506, §204(c)(3), added paragraph (12).
[81] See footnote 26.
[82] As in original. Probably should be "programming".
[83] See footnote 1.
[84] P.L. 99-506, §205, inserted "(or to an Indian tribe under part D of this title)".

Part B—Basic Vocational Rehabilitation Services

STATE ALLOTMENTS

Sec. 110. [29 U.S.C. 730] (a)(1) Subject to the provisions of subsection (d), for[85] each fiscal year beginning before October 1, 1978, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under section 100(b)(1) for allotment under this section as the product of (A) the population of the State, and (B) the square of its allotment percentage, bears to the sum of the corresponding products for all the States.

(2)(A) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment in an amount equal to the amount such State received under paragraph (1) for the fiscal year ending September 30, 1978, and an additional amount determined pursuant to subparagraph (B) of this paragraph.

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 100(b)(1)(A)[86] for allotment under this section in excess of the amount appropriated under section 100(b)(1)(A)[87] for the fiscal year ending September 30, 1978, in an amount equal to the sum of—

(i) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and the square of its allotment percentage bears to the sum of the corresponding products for all the States; and

(ii) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and its allotment percentage bears to the sum of the corresponding products for all the States.

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) under this subsection for any fiscal year which is less than one-third of 1 percent of the amount appropriated under section 100(b)(1)(A) [88], or $3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(4) For each fiscal year beginning on or after October 1, 1984, for which any amount is appropriated pursuant to section 100(b)(1)(B), each State shall receive an allocation (from such appropriated amount) in addition to the allotment to which such State is entitled under paragraphs (2) and (3) of this subsection. Such additional allocation shall be an amount which bears the same ratio to the amount so appropriated as that State's allotment under paragraphs (2) and (3) of this subsection bears to the sum of such allotments of all the States.[89]

(b)(1) If the payment to a State under section 111(a) for a fiscal year is less than the total payments such State received under section 2 of the Vocational Rehabilitation Act for the fiscal year ending June 30, 1973, such State shall be entitled to an additional payment (subject to the same terms and conditions applicable to other payments under this part) equal to the difference between such payment under section 111(a) and the amount so received by it.

(2) If a State receives as its Federal share under section 111(a) for any fiscal year[90] less than the applicable Federal share[91] of the expenditure of such State for fiscal year 1972[92] for vocational rehabilitation services under the plan for such State approved under section 101 (including any amount expended by such State for the administration of the State plan but excluding any amount expended by such State from non-Federal sources for construction under such plan), such State shall be entitled to an additional payment for such fiscal year, subject to the same terms and conditions applicable to other payments under this part, equal to the difference between such payment under section 111(a) and an amount equal to the applicable Federal share[93] of such expenditure for vocational rehabilitation services.

---

[85] P.L. 99-506, §207(1), struck out "For" and substituted "Subject to the provisions of subsection (d), for".
[86] P.L. 98-221, §111(e)(1), struck out "100(b)(1)" and substituted "100(b)(1)(A)".
[87] See footnote 86.
[88] See footnote 86.
[89] P.L. 98-221, §111(e)(2), added paragraph (4).
[90] P.L. 99-506, §206(a)(1), struck out ", as a result of the maintenance of effort provisions of such section,".
[91] P.L. 99-506, §103(c)(2), struck out "80 percent" and substituted "the applicable Federal share".
[92] P.L. 99-506, §206(a)(2), inserted "for fiscal year 1972".
[93] See footnote 91.

(3) Any payment attributable to the additional payment to a State under this subsection shall be made only from appropriations specifically made to carry out this subsection, and such additional appropriations are hereby authorized.

(c)(1) Not later than forty-five days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this title to one or more other States to the extent the Commissioner determines that such other State will be able to use such additional amount during that fiscal year or to pay for initial expenditures during the subsequent fiscal year for carrying out such purposes.

(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.[94]

(d)(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 100(b)(1) for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part D of this title.

(2) For any fiscal year the sum shall be not less than 1/4 of one percent and not more than one percent of the amount under paragraph (1), as determined by the Secretary.[95]

PAYMENTS TO STATES

Sec. 111. [29 U.S.C. 731] (a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year (including any additional payment to it under section 110(b)), the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

(2)(A) The total of payments under paragraph (1) to a State for a fiscal year may not exceed its allotment under subsection (a) (and any additional payment under subsection (b)), of section 110 for such year and such payments shall not be made in an amount which would result in a violation of the provisions of the State plan required by section 101(a)(17).

(B) The amount otherwise payable to a State for a fiscal year under this section shall be reduced by any amount by which expenditures from non-Federal sources under the State plan during such year under this title are less than the average of the total of such expenditures for the three preceding fiscal years.

(C) The Commissioner may waive or modify any requirement or limitation under paragraphs (A) and (B) if the Commissioner determines that a waiver or modification is an equitable response to exceptional or uncontrollable circumstances affecting the State.[96]

(b) The method of computing and paying amounts pursuant to subsection (a) shall be as follows:

(1) The Commissioner shall, prior to the beginning of each calendar quarter or other period prescribed by the Commissioner[97], estimate the amount to be paid to each State under the provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Secretary may find necessary.

(2) The Commissioner shall pay, from the allotment available therefor, the amount so estimated by the Commissioner[98] for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which the Commissioner finds that the[99] estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the General Accounting Office, shall be

---

[94] P.L. 99-506, §206(b), amended subsection (c) in its entirety.

[95] P.L. 99-506, §207(2), added subsection (d).

[96] P.L. 99-506, §208, amended subsection (a) in its entirety.

[97] P.L. 99-506, §1001(b)(6)(A), struck out "him" and substituted "the Commissioner".

[98] P.L. 99-506, §1001(b)(6)(B)(i), struck out "him" and substituted "the Commissioner".

[99] P.L. 99-506, §1001(b)(6)(B)(ii), struck out "he finds that his" and substituted "the Commissioner finds that the".

made through the disbursing facilities of the Treasury Department, and shall be made in such installments as the Commissioner may determine.

CLIENT ASSISTANCE PROGRAM[100]

SEC. 112. [29 U.S.C. 732] (a) From funds appropriated under subsection (i), the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon request of such clients or client applicants, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this Act, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this Act. The client assistance program may provide information on the available services under this Act to any handicapped individuals in the State.[101]

(b) No State may receive payments from its allotment under this Act in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program, which—

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with handicaps[102] who are receiving treatments, services, or rehabilitation under this Act within the State; and

(2) meets the requirements of designation under subsection (c).

(c)(1)(A)[103] The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this paragraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor may, in the initial designation,[104] designate an agency which provides treatment, services, or rehabilitation to individuals with handicaps[105] under this Act.

(B) The Governor may not redesignate the agency designated under subparagraph (A) without good cause and only after notice and an opportunity for public comment has been given of the intention to make such redesignation.[106]

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with handicaps[107] in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(d) The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e)(1)(A) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than $50,000.

(B) The Secretary shall allot $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(C) For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(D)(i) In any fiscal year that the funds appropriated for such fiscal year exceed $7,500,000, the minimum allotment shall be $75,000 for States and $45,000 for territories.

(ii) Subject to subsection (c), the Commissioner may increase the minimum allotment under subparagraph (A) for any fiscal year for which funds appropriated under this section for such fiscal year exceed the sums appropriated under this section for the preceding fiscal year by more than the percentage increase in the Consumer Price Index published monthly by the Bureau of Labor Statistics.[108]

---

[100] P.L. 98-221, §113(a), amended §112 in its entirety.
[101] P.L. 99-506, §209(a), added this sentence.
[102] See footnote 1.
[103] P.L. 99-506, §209(b)(2)(A), inserted "(A)".
[104] P.L. 99-506, §209(b)(1), inserted ", in the initial designation,".
[105] See footnote 1.
[106] P.L. 99-506, §209(b)(2)(B), added subparagraph (B).
[107] See footnote 1.
[108] P.L. 99-506, §209(d), added subparagraph (D).

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary at appropriate times[109] to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any such amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).[110]

(f) No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of[111], any rehabilitation project, program, or facility receiving assistance under this Act in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3) Each program shall contain provisions designed to assure that to the maximum extent possible mediation procedures are used prior to resorting to administrative or legal remedies.

(4) The agency designated under subsection (c) shall submit an annual report to the Secretary on the operation of the program during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by such program. A copy of each such report shall be submitted to the appropriate committees of the Congress by the Secretary, together with a summary of such reports and his evaluation of the program, including appropriate recommendations.

(h)(1) The Commissioner shall conduct a comprehensive evaluation of the client assistance program authorized by this section, and submit a report to Congress, not later than February 1, 1986.

(2) In conducting the study required by this subsection, the Commissioner shall address and report the following information for each State that received a client assistance program grant. The study shall include—

(A) the numbers of individuals with handicaps[112] assisted through the client assistance program;

(B) the handicapping conditions of the individuals assisted, and the proportion each type of individuals represents of the total population assisted;

(C) the types of services provided, cross-referenced to types of individuals with handicaps[113] assisted through each service;

(D) the type of organization or agency which administers the client assistance program;

(E) the physical proximity of the client assistance program to the State vocational rehabilitation agency; and

(F) the type of organizational structure used by the client assistance program to deliver services.

(3) In conducting the study the Commissioner shall make the following comparisons:

(A) differences in service delivery patterns in client assistance programs in urban and rural areas;

(B) differences in service delivery patterns among client assistance programs administered in various organizational settings; and

(C) differences in service delivery patterns among client assistance programs established after this reauthorization and those that were established prior to this reauthorization.

---

[109] P.L. 99-506, §1001(b)(7), struck out "from time to time on such dates he may fix" and substituted "at appropriate times".

[110] P.L. 99-506, §209(c), amended paragraph (3) in its entirety.

[111] P.L. 99-506, §209(e), struck out ", or receive benefits of any kind directly or indirectly from".

[112] See footnote 1.

[113] See footnote 1.

(4) The report shall include such recommendations, including recommendations for legislative proposals, as the Commissioner deems necessary.

(i) There are authorized to be appropriated $7,100,000 for fiscal year 1987, $7,550,000 for fiscal year 1988, and $8,000,000 for fiscal year 1989, $8,450,000 for fiscal year 1990, and $8,796,000 for fiscal year 1991 to carry out the provisions of this section.[114]

PART C—INNOVATION AND EXPANSION GRANTS

STATE ALLOTMENTS

SEC. 120. [29 U.S.C. 740] (a)(1)[115] From the sums available pursuant to section 100(b)(2) for any fiscal year for grants to States to assist them in meeting the costs described in section 121, each State shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of the State bears to the population of all the States. The allotment to any State under the preceding sentence for any fiscal year which is less than $50,000 shall be increased to that amount, and for the fiscal year ending June 30, 1974, no State shall receive less than the amount necessary to cover up to 90 per centum of the cost of continuing projects assisted under section 4(a)(2)(A) of the Vocational Rehabilitation Act, except that no such project may receive financial assistance under both the Vocational Rehabilitation Act and this Act for a total period of time in excess of five years. The total of the increase required by the preceding sentence shall be derived by proportionately reducing the allotments to each of the remaining States under the first sentence of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from thereby being reduced to less than $50,000.

(b) Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be utilized by such State in carrying out the purposes of this section, the Commissioner[116] shall make such amount available for carrying out the purposes of this section to one or more other States which the Commissioner[117] determines will be able to use additional amounts during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

PAYMENTS TO STATES

SEC. 121. [29 U.S.C. 741] (a) From each State's allotment under this part for any fiscal year, the Commissioner shall pay to such State or, at the option of the State agency designated pursuant to section 101(a)(1), to a public or nonprofit organization or agency, a portion of the cost of planning, preparing for, and initiating special programs under the State plan approved pursuant to section 101 to expand vocational rehabilitation services, including—

(1) programs to initiate or expand such services to individuals with the most severe handicaps;

(2) special programs under such State plan to initiate or expand services to classes of individuals with handicaps[118] who have unusual or difficult problems in connection with their rehabilitation; and

(3) programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults.[119].

Payments may also be made under this section for the costs of the construction of facilities to be used in providing services under such State plan if provision for such construction is included in such State plan. The Commissioner may require that any portion of a State's allotment under this section, but not more than 50 per centum of such allotment, may be expended in connection with only such projects as have first been approved by the Commissioner. Any grant of funds under this section which will be used for direct services to individuals with handicaps[120] or for establishing or maintaining facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency designated pursuant to section 101.

---

[114] P.L. 99-506, §209(f), amended subsection (i) in its entirety.

[115] As in original. Enacted without a paragraph (2).

[116] P.L. 99-506, §1001(b)(8), struck out "he" and substituted "the Commissioner".

[117] See footnote 116.

[118] See footnote 1.

[119] P.L. 98-221, §114(a), struck out "including programs to initiate or expand such services to individuals with the most severe handicaps, or of special programs under such State plan to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particularly handicapped individuals who are poor, and responsibility for whose treatment, education, and rehabilitation is shared by the State agency designated in section 101 with other agencies." and substituted "including—

"(1) programs to initiate or expand such services to individuals with the most severe handicaps;

"(2) special programs under such State plan to initiate or expand services to classes of handicapped individuals who have unusual or difficult problems in connection with their rehabilitation; and

"(3) programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults."

(b) Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the project as approved, and sums appropriated for grants under this section shall remain available for such grants through fiscal year 1991[121]. Payments with respect to any project may not exceed 90 per centum of the cost of such project. The non-Federal share of the cost of a project may be in cash or in kind and may include funds spent for project purposes by a cooperating public or nonprofit agency provided that it is not included as a cost in any other federally financed program.

(c) Payments under this section may be made in advance or by way of reimbursement for services performed and purchases made, as may be determined by the Commissioner, and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of this section.

PART D—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

VOCATIONAL REHABILITATION SERVICES GRANTS

SEC. 130. [29 U.S.C. 750] (a) The Commissioner, in accordance with the provisions of this part may make grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for handicapped American Indians residing on such reservations. The non-Federal share of such costs may be in cash or in kind, fairly valued, and the Commissioner may waive such non-Federal share requirement in order to carry out the purposes of this Act.[122]

(b)(1) No grant may be made under this part for any fiscal year unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application unless the application—

(A) is made at such time, in such manner, and contains such information as the Commissioner may require;

(B) contains assurances that the rehabilitation services provided under this part to handicapped American Indians residing on a reservation in a State shall be, to the maximum extent feasible, comparable to rehabilitation services provided under this title to other individuals with handicaps[123] residing in the State and that, where appropriate, may include services traditionally used by Indian tribes[124]; and

(C) contains assurances that the application was developed in consultation with the designated State unit of the State.

(2) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act shall be applicable to any application submitted under this part. For purposes of this paragraph, any reference in any such provision to the Secretary of Education[125] or to the Secretary of the Interior shall be considered to be a reference to the Commissioner.

(3) Any application approved under this part shall be effective for not less than twelve months or more than 36 months,[126] except as determined otherwise by the Commissioner pursuant to prescribed regulations. The State shall continue to provide vocational rehabilitation services under its State plan to American Indians residing on a reservation whenever such State includes any such American Indians in its State population under section 110(a)(1).

(4) In making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part.[127]

(5) Nothing in this section may be construed to authorize a separate service delivery system for Indian residents of a State who reside in non-reservation areas.[128]

(c)[129] The term "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

---

[120] See footnote 1.

[121] P.L. 98-221, §114(b), struck out "1982" and substituted "1986".
P.L. 99-506, §210, struck out "the fiscal year ending September 30, 1986" and substituted "fiscal year 1991".

[122] P.L. 99-506, §211(a), amended subsection (a) in its entirety.

[123] See footnote 1.

[124] P.L. 99-506, §211(b)(1), inserted "and that, where appropriate, may include services traditionally used by Indian tribes".

[125] P.L. 99-506, §1002(b)(1), struck out "Health, Education, and Welfare" and substituted "Education".

[126] P.L. 99-506, §211(b)(2), inserted "or more than 36 months,".

[127] P.L. 99-506, §211(b)(3), added paragraph (4).

[128] P.L. 99-506, §211(b)(3), added paragraph (5).

[129] P.L. 99-506, §211(c), struck out subsection (c) and redesignated subsection (d) as subsection (c).

* * * * * * *

EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC. 501. [29 U.S.C. 791] (a) There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman[130] of the Equal Employment Opportunity Commission[131], the Administrator of Veterans' Affairs, and the Secretaries of Labor and Education and Health and Human Services[132]. The Secretary of Education and the Chairman of the Equal Employment Opportunity Commission[133] shall serve as co-chairmen of the Committee. The resources of the President's Committees on Employment of the Handicapped and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with handicaps[134], and to review, on a periodic basis, in cooperation with the Equal Employment Opportunity Commission[135], the adequacy of hiring, placement, and advancement practices with respect to individuals with handicaps[136], by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Equal Employment Opportunity Commission[137] to assist the Office[138] to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Equal Employment Opportunity Commission[139] such recommendations for legislative and administrative changes as it deems necessary or desirable. The Equal Employment Opportunity Commission[140] shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act, submit to the Equal Employment Opportunity Commission[141] and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with handicaps[142] in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Office[143], if the Office[144] determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with handicaps[145].

(c) The Equal Employment Opportunity Commission[146], after consultation with the

---

[130] As in original. Probably should be "Director".

[131] P.L. 98-221, §104(b)(3)(A), struck out "Civil Service Commission" and substituted "Office of Personnel Management".
P.L. 99-506, §1002(e)(1), struck out "Office of Personnel Management" and substituted "Equal Employment Opportunity Commission".

[132] P.L. 98-221, §104(b)(3)(A), struck out "Health, Education, and Welfare" and substituted "Education and Health and Human Services".

[133] P.L. 98-221, §104(b)(3)(B), struck out "Health, Education, and Welfare and the Chairman of the Civil Service Commission" and substituted "Education and the Chairman of the Office of Personnel Management".
P.L. 99-506, §1002(e)(1), struck out "Office of Personnel Management" and substituted "Equal Employment Opportunity Commission".

[134] See footnote 1.

[135] P.L. 98-221, §104(b)(3)(C), struck out "Civil Service Commission" and substituted "Office of Personnel Management".
P.L. 99-506, §1002(e)(1), struck out "Office of Personnel Management" and substituted "Equal Employment Opportunity Commission".

[136] See footnote 1.

[137] See footnote 135.

[138] P.L. 98-221, §104(b)(3)(D), struck out "Commission" and substituted "Office". As in original. Possibly should be "Commission".

[139] See footnote 135.

[140] See footnote 135.

[141] See footnote 135.

[142] See footnote 1.

[143] See footnote 138.

[144] See footnote 138.

[145] See footnote 1.

[146] See footnote 135.

Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with handicaps[147], including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies andd procedures.

(d) The Equal Employment Opportunity Commission[148], after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with handicaps[149] by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Equal Employment Opportunity Commission[150] under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the[151] activities of the Equal Employment Opportunity Commission[152] under subsections (b) and (c) of this section.

(e) An individual who, as a part of a[153] individualized written rehabilitation program under a State plan approved under this Act, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f)(1) The Secretary of Labor and the Secretary of Education[154] are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of the Handicapped, special consideration shall be given to qualified handicapped individuals.

* * * * * * *

NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

SEC. 504. [29 U.S.C. 794] No otherwise qualified individual with handicaps[155] in the United States, as defined in section 7(8)[156] , shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

TITLE VI—EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS

SHORT TITLE

SEC. 601. [29 U.S.C. 795 note] This title may be cited as the "Employment Opportunities for Handicapped Individuals Act".

---

[147] See footnote 1.

[148] See footnote 135.

[149] See footnote 1.

[150] See footnote 135.

[151] P.L. 99-506, §1002(e)(2)(A), struck out one "the".

[152] P.L. 98-221, §104(b)(3)(E), struck out "Civil Service Commission's activities" and substituted "the activities of the Office of Personnel Management".

P.L. 99-506, §1002(e)(1), struck out "Office of Personnel Management" and substituted "Equal Employment Opportunity Commission".

[153] P.L. 99-506, §1001(f)(1), struck out "his" and substituted "a". As in original. Should be "an".

[154] P.L. 98-221, §104(b)(3)(F), struck out "Health, Education, and Welfare" and substituted "Education".

[155] See footnote 26.

[156] P.L. 99-506, §1002(e)(4), struck out "7(7)" and substituted "7(8)".

PART A—COMMUNITY SERVICE EMPLOYMENT PILOT PROGRAMS FOR HANDICAPPED INDIVIDUALS

ESTABLISHMENT OF PILOT PROGRAM

SEC. 611. [29 U.S.C. 795] (a) In order to promote useful opportunities in community service activities for individuals with handicaps[157] who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the "Secretary") is authorized to establish a community service employment pilot program for individuals with handicaps[158]. For purposes of this part, the term "eligible individuals" means persons who are individuals with handicaps[159] (as defined in section 7(8)[160] of this Act) and who are referred to programs under this part by designated State units.

(b)(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program referred to in subsection (a). Such agreements may include provisions consistent with subsection (c) for the payment of the costs of projects developed by such organizations and agencies in cooperation with the Secretary. No payment shall be made by the Secretary toward the cost of any such project unless the Secretary determines that:

(A) Such project will provide employment only for eligible individuals, except that if eligible individuals are not available to serve as technical, administrative, or supervisory personnel for a project then such personnel may be recruited from among other individuals.

(B) Such project will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities.

(C) Such project will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, except for projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship.

(D) Such project will contribute to the general welfare of the community in which eligible individuals are employed under such project.

(E) Such project (i) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (ii) will not result in any displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and (iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(F) Such project will not employ any eligible individual to perform work which is the same or substantially the same as that performed by any other person who is on layoff from employment with the agency or organization sponsoring such project.

(G) Such project will utilize methods of recruitment and selection (including the listing of job vacancies with the State agency units designated under section 101(a)(2)(A) to administer vocational rehabilitation services under this Act) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project.

(H) Such project will provide for (i) such training as may be necessary to make the most effective use of the skills and talents of individuals who are participating in the project, and (ii) during the period of such training, a reasonable subsistence allowance for such individuals and the payment of any other reasonable expenses related to such training.

(I) Such project will provide safe and healthy working conditions for any eligible individual employed under such project and will pay any such individual at a rate of pay not lower than the rate of pay described in paragraph (2).

(J) Such project will be established or administered with the advice of (i) persons competent in the field of service in which employment is being provided, and (ii) persons who are knowledgeable with regard to the needs of individuals with handicaps[161].

---

[157] See footnote 1.
[158] See footnote 1.
[159] See footnote 1.
[160] P.L. 99-506, §1002(f), struck out "7(7)" and substituted "7(8)".
[161] See footnote 1.

(K) Such project will pay any reasonable costs for work-related expenses, transportation, and attendant care incurred by eligible individuals employed under such project in accordance with regulations prescribed by the Secretary.

(L) Such project will provide appropriate placement services for employees under the project to assist them in locating unsubsidized employment when the Federal assistance for the project terminates.

(2) The rate of pay referred to in subparagraph (I) of paragraph (1) is the highest of the following:

(A) the prevailing rate of pay for persons employed in similar occupations by the same employer.

(B) The[162] minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 if such employee were not exempt from such Act under section 13 thereof.

(C) The[163] State or local minimum wage for the most nearly comparable covered employment.

The Department of Labor shall not issue any certificate of exemption under section 14(c) of the Fair Labor Standards Act of 1938 with respect to any person employed in a project under this section.

(c)(1) The Secretary may pay not to exceed 90 percent of the cost of any project which is the subject of an agreement entered into under subsection (b). Notwithstanding the preceding sentence, the Secretary may pay all of the costs of any such project which is (A) an emergency or disaster project, or (B) a project located in an economically depressed area, as determined by the Secretary in consultation with the Secretary of Commerce and the Director of the Community Services Administration.

(2) The non-Federal share of any project under this part may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to services and facilities contributed from non-Federal sources.

(d) Payments under this part may be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.

ADMINISTRATION

SEC. 612. [29 U.S.C. 795a] (a) In order to effectively carry out the provisions of this part, the Secretary shall, through the Commissioner of the Rehalibitation[164] Services Administration, consult with any designated State unit with regard to—

(1) the localities in which community service projects of the type authorized by this part are most needed;

(2) the employment situations and types of skills possessed by eligible individuals in such localities; and

(3) potential projects suitable for funding in such localities.

(b) The Secretary shall coordinate the pilot program established under this part with programs authorized under the Emergency Jobs and Unemployment Assistance Act of 1974, the Job Training Partnership Act[165], the Community Services Act of 1974, and the Emergency Employment Act of 1971. Appropriations under this part may not be used to carry out any program under the Acts referred to in the preceding sentence.

(c) In carrying out this part, the Secretary may, with the consent of any other Federal, State, or local agency, use the services, equipment, personnel, and facilities of such agency with or without providing such agency with reimbursement and may use the services, equipment, and facilities of any other public or private entity on a similar basis.

(d) Within one hundred and eighty days after the effective date of this part, the Secretary shall issue and publish in the Federal Register such regulations as may be necessary to carry out this part.

(e) The Secretary shall not delegate any function of the Secretary under this part to any other department or agency of the Federal Government.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 613. [29 U.S.C. 795b] (a) Eligible individuals who are employed in any project funded under this part shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

---

[162] As in original. Probably should be "the".

[163] See footnote 162.

[164] As in original. Should be "Rehabilitation".

[165] P.L. 98-221, §165, struck out "Comprehensive Employment and Training Act of 1973" and substituted "Job Training Partnership Act".

(b) No contract shall be entered into under this part with a contractor who is, or whose employees are, under State law, exempted from operation of any State workmen's compensation law generally applicable to employees, unless the contractor shall undertake to provide for persons to be employed under such contract, through insurance by a recognized carrier or by self-insurance authorized by State law, workmen's compensation coverage equal to that provided by law for covered employment.

(c) No part of the wages, allowances, or reimbursement for transportation and attendant care costs made available to an eligible individual employed in any project funded under this part shall be treated as income or benefits for the purpose of any other program or provision of State or Federal law, unless the Secretary makes a case by case determination that disallowance of such income or benefits is inequitable or does not carry out the purposes of this title.

* * * * * * *

[*Internal References.*—Social Security Act §§222(a), (b)(1), (d)(1)(end) and (d)(5), 225(b)(1), 1615(a)(end), (c), (d), and 1631(a)(6)(A) cite Title I of the Rehabilitation Act of 1973; §1136(f)(1) and P.L. 89-73, §306(c) (Vol. II, p. 463), cite the Rehabilitation Act of 1973; Social Security Act §§508(a)(1) and (b)(2) cite §504 and §1915(c)(5)(C)(ii) cites §110. Social Security Act §§402(a)(7)(C)(ii), 1002(a)(8)(C), 1402(a)(8)(C), 1602(a)(14)(D)(State), and 1612(b) (catchline) (SSI), have footnotes referring to P.L. 93-112.]

P.L. 93-113, Approved October 1, 1973 (87 Stat. 394)

Domestic Volunteer Service Act Of 1973

* * * * * * *

TITLE IV—ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

SEC. 401. [42 U.S.C. 5041] There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency in order to provide a focal point for volunteerism at the national, State, and local level[1]. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. There shall also be in such agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such agency one Associate Director who shall be appointed by the President with the advice and consent of the Senate, and shall be compensated at the rate provided for level 5[2] of the Executive Schedule under section 5316 of title 5, United States Code.[3] Such Associate Director shall be designated "Associate Director for Domestic and Anti-Poverty Operations" and shall carry out operational responsibility for all programs authorized under this Act.[4] There shall also be in such agency two Assistant Directors, each of whom shall be appointed by the Director, and who shall report directly to the Associate Director for Domestic and Anti-Poverty Operations.[5] One such Assistant Director shall be primarily responsible for VISTA and other antipoverty programs under title I of this Act, and one such Assistant Director shall be primarily responsible for the Older American Volunteer Programs under title II of this Act.[6]

* * * * * * *

---

[1] P.L. 98-288, §17(1), inserted "in order to provide a focal point for volunteerism at the national, State, and local level".

[2] As in original. Probably should be "V".

[3] P.L. 98-288, §17(2), amended this sentence in its entirety.

[4] See footnote 3.

[5] See footnote 3.

[6] P.L. 98-288, §17(2), amended this sentence in its entirety and also struck out the next sentence.

SPECIAL LIMITATIONS

SEC. 404. [42 U.S.C. 5044] (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this Act is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as the Director[7] determines will further the purposes of this Act.

(f) Notwithstanding any other provision of law[8], the Director shall assign or delegate any substantial responsibility for carrying out programs under this Act only to persons appointed or employed pursuant to clauses (1) and (2) of section 402, and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5, United States Code, on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.[9]

(g)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

* * * * * * *

[*Internal References.*—Social Security Act §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 93-113. P.L. 89-73, §203(b), (Vol. II, p. 462) cites title II of the Domestic Volunteer Service Act of 1973.]

P.L. 93-134, Approved October 19, 1973 (87 Stat. 466)

[Indians—Judgments—Indian Claims Commission]

* * * * * * *

[25 U.S.C. 1401] Notwithstanding any other law, all use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the

---

[7] P.L. 99-551, §10(i)(7), struck out "he" and substituted "the Director".

[8] P.L. 98-288, §19(1), struck out "and except as provided in the second sentence of this subsection".

[9] P.L. 98-288, §19(2), struck out "The Director may personally make exceptions to the requirement set forth in the first sentence of this subsection for persons he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after the effective date of this Act.".

United States Claims Court in favor of any Indian tribe, band, group, pueblo, or community (hereinafter referred to as "Indian tribe"), together with any interest earned thereon, after payment of attorney fees and litigation expenses, shall be made pursuant to the provisions of this Act.

* * * * * * *

SEC. 6. [25 U.S.C. 1406] (a) The Secretary shall promulgate rules and regulations to implement this Act no later than the end of the one hundred and eighty-day period beginning on the date of enactment of this Act. Among other things, such rules and regulations shall provide for adequate notice to all entities and persons who may receive funds under any Indian judgment of all relevant procedures pursuant to this Act concerning any such judgment.

(b) No later than sixty days prior to the promulgation of such rules and regulations the Secretary shall publish the proposed rules and regulations in the Federal Register.

(c) No later than thirty days prior to the promulgation of such rules and regulations, the Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed rules and regulations, once published, to all interested parties.

SEC. 7. [25 U.S.C. 1407] None of the funds which—

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act, or

(2) on the date of enactment of this Act, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to the date of enactment of this Act, or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act, and any purchases made with such funds,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

SEC. 8. [25 U.S.C. 1408] Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 93-134.]

P.L. 93-233, Approved December 31, 1973 (87 Stat. 947)
[Social Security Benefits—Increase]

* * * * * * *

Eligibility of Supplemental Security Income Recipients for Food Stamps

SEC. 8.

* * * * * * *

(c) [42 U.S.C. 1382e note] For purposes of section 6(g) of the Food Stamp Act of 1977 and subsections (b)(3) and (f) of this section, the level of State supplementary payment under section 1616(a) shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 and which is such that the limitation on State fiscal liability under section 401 does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.

(d) [42 U.S.C. 1382e note] Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c), that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

(2) such State continues without interruption to meet the requirements of section 1618 of such Act for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.

* * * * * * *

Medicaid Eligibility for Individuals Receiving Mandatory State Supplementary Payments

SEC. 13.

* * * * * * *

(c) [42 U.S.C. 1396a note] In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare under section 212(a) of Public Law 93-66, and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a), and

(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.

* * * * * * *

[*Internal References.*—Social Security Act §1921(a)(5)(D) cites §13(c) of P.L. 93-233. The catchlines to Social Security Act §§215(i) and 1902 and P.L. 92-603, §401 (Vol. II, p. 527) have footnotes referring to P.L. 93-233.]

P.L. 93-247, Approved January 31, 1974 (88 Stat. 4)

Child Abuse Prevention and Treatment Act

* * * * * * *

THE NATIONAL CENTER ON CHILD ABUSE AND NEGLECT

SEC. 2. [42 U.S.C. 5101] (a) The Secretary of Health and Human Services[1] (hereinafter referred to in this Act as the "Secretary") shall establish an office to be known as the National Center on Child Abuse and Neglect (hereinafter referred to in this Act as the "Center").

(b) The Secretary, through the Center, shall—

(1) compile, analyze, publish, and disseminate a summary annually of recently conducted and currently conducted research on child abuse and neglect;

(2) compile, evaluate, publish, and disseminate to each State such materials and information as may assist the States in achieving the objectives of section 4(d),

---

[1] P.L. 98-457, §101(a), struck out "Health, Education, and Welfare" and substituted "Health and Human Services".

including an evaluation of various methods and procedures for the investigation and prosecution of child physical and sexual abuse cases and resultant psychological trauma of the child victim;[2]

(3)[3] develop and maintain an information clearinghouse on all programs, including private programs, showing promise of success, for the prevention, identification, and treatment of child abuse and neglect;

(4)[4] compile, publish, and disseminate training materials for personnel who are engaged or intend to engage in the prevention, identification, and treatment of child abuse and neglect;

(5) develop and disseminate, to appropriate State and local officials, model training materials to assist in training law enforcement, legal, judicial, medical, mental health, and child welfare personnel in appropriate methods of interacting during investigative, administrative, and judicial proceedings with children subjected to child abuse;[5]

(6)[6] provide technical assistance (directly or through grant or contract) to public and nonprofit private agencies and organizations to assist them in planning, improving, developing, and carrying out programs and activities relating to the prevention, identification, and treatment of child abuse and neglect;

(7)[7] conduct research on the causes, prevention, identification, and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative, and judicial procedures in cases of child abuse;[8]

(8)[9] study and investigate the national incidence of child abuse and neglect and make findings about any relationship between nonpayment of child support and between various other factors and child abuse and neglect, and the extent to which incidents of child abuse and neglect are increasing in number and severity, and, within two years after the date of the enactment of the Child Abuse Amendments of 1984, submit such findings to the appropriate Committees of the Congress together with such recommendations for administrative and legislative changes as are appropriate; and[10]

(9)[11] in consultation with the Advisory Board on Child Abuse and Neglect, annually prepare reports on efforts during the preceding two-year period to bring about coordination of the goals, objectives, and activities of agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and, not later than March 1, 1985, and March 1 of each second year thereafter, submit such a report to the appropriate Committees of the Congress.[12]

(10) not later than two years after the first fiscal year for which funds are obligated under section 1404A of the Victims of Crime Act of 1984, the Secretary shall—

(A) evaluate the effectiveness of assisted programs in achieving the objectives of section 4(d); and

(B) submit a report to the appropriate committees of the Congress of such evaluation and of technical assistance in achieving the objectives of such section provided to the States through the National Center on Child Abuse and Neglect.[13]

The Secretary shall establish research priorities for making grants or contracts under clause (5) of this subsection and, not less than sixty days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

(c) The functions of the Secretary under subsection (b) of this section may be carried out[14] either directly or by way of grant or contract. Grants may be made under subsection (b)(5) for periods of not more than three years. Any such grant shall be reviewed at least annually by the Secretary, utilizing peer review mechanisms to assure the quality and progress of research conducted under such grant.

(d) The Secretary shall make available to the Center such staff and resources as are necessary for the Center to carry out effectively its functions under this Act.

---

[2] P.L. 99-401, §103(a)(2), added this paragraph (2).

[3] P.L. 99-401, §103(a)(1), redesignated the former paragraph (2) as paragraph (3).

[4] P.L. 99-401, §103(a)(1), redesignated the former paragraph (3) as paragraph (4).

[5] P.L. 99-401, §103(a)(3), added this paragraph (5).

[6] P.L. 99-401, §103(a)(1), redesignated the former paragraph (4) as paragraph (6).

[7] P.L. 99-401, §103(a)(1), redesignated the former paragraph (5) as paragraph (7).

[8] P.L. 99-401, §103(a)(4), amended paragraph (7), as redesignated, in its entirety.

[9] P.L. 99-401, §103(a)(1), redesignated the former paragraph (6) as paragraph (8).

[10] P.L. 98-457, §101(b), amended the former clause (6) in its entirety. Executed as if §101(b) read "paragraph" rather than "clause".

[11] P.L. 99-401, §103(a)(1), redesignated the former paragraph (7) as paragraph (9).

[12] P.L. 98-457, §101(b), amended the former clause (7) in its entirety. Executed as if §101(b) read "paragraph" rather than "clause".

[13] P.L. 99-401, §103(a)(5), added paragraph (10).

[14] P.L. 98-457, §101(c), struck out "Secretary may carry out his functions under subsection (b) of this section" and substituted "functions of the Secretary under subsection (b) of this section may be carried out".

(e) No funds appropriated under this Act for any grant or contract may be used for any purpose other than that for which such funds were specifically authorized.[15]

DEFINITION

Sec. 3. [42 U.S.C 5102] For purposes of this Act—

(1) the term[16] "child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person (including any employee of a residential facility or any staff person providing out-of-home care)[17] who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;[18]

(2)(A) the term "sexual abuse" includes—

(i) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or

(ii) the rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children,

under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary; and

(B) for the purpose of this clause, the term "child" or "children" means any individual who has not or individuals who have not attained the age of eighteen; and[19]

(3) the term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survivial[20] of the infant and the treatment itself under such circumstances would be inhumane.[21]

DEMONSTRATION OR SERVICE PROGRAMS AND PROJECTS

Sec. 4. [42 U.S.C. 5103] (a) The Secretary, through the Center, is authorized to make grants to, and enter into contracts with, public agencies or nonprofit private organizations (or combinations thereof) for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect. Grants or contracts under this subsection may be—

(1) for training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification, and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) for the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support and supervision of satellite centers and attention homes, as well as providing advice

---

[15] P.L. 98-457, §101(d), added subsection (e).

[16] P.L. 98-457, §121(1), struck out "this Act the term" and substituted "This Act—
(1) the term".

[17] P.L. 98-457, §102(1), added "(including any employee of a residential facility or any staff person providing out-of-home care)".

[18] P.L. 98-457, §102(2), struck out the period and substituted a semicolon.

[19] P.L. 98-457, §102(3), added clause (2).
P.L. 98-457, §121(2), struck out the period and substituted "; and".

[20] As in original. Should be "survival".

[21] P.L. 98-457, §121(3), added clause (3).

and consultation to individuals, agencies, and organizations which request such services;

(3) for furnishing services of teams of professional and paraprofessional personnel who are trained in the prevention, identification, and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available; and

(4) for such other innovative programs and projects, including programs and projects for parent self-help, and for prevention and treatment of drug-related child abuse and neglect, that show promise of successfully preventing or treating cases of child abuse and neglect as the Secretary may approve.

(b) (1) The Secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

(2) In order for a State to qualify for assistance under this subsection, such State shall—

(A) have in effect a State child abuse and neglect law which shall include provisions for immunity for persons reporting instances of child abuse and neglect from prosecution, under any State or local law, arising out of such reporting;

(B) provide for the reporting of known and suspected instances of child abuse and neglect;

(C) provide that upon receipt of a report of known or suspected instances of child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report, and, upon a finding of abuse or neglect, immediate steps shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect;

(D) demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the State will deal effectively with child abuse and neglect cases in the State;

(E) provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and the child's[22] parents or guardians;

(F) provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and appropriate State agencies providing human services;

(G) provide that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings;

(H) provide that the aggregate of support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during fiscal year 1973, and set forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects;

(I) provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect;[23]

(J) to the extent feasible, insure that parental organizations combating child abuse and neglect receive preferential treatment; and[24]

(K) within one year after the date of the enactment of the Child Abuse Amendments of 1984, have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilites, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.[25]

---

[22] P.L. 98-457, §103(a), struck out "his" and substituted "and the child's".
[23] P.L. 98-457, §122(1), struck out "and".
[24] P.L. 98-457, §122(2), struck out the period and substituted "; and".

If a State has failed to obligate funds awarded under this subsection within eighteen months after the date of award, the next award under this subsection made after the expiration of such period shall be reduced by an amount equal to the amount of such unobligated funds unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

(3)(A) Subject to subparagraph (B) of this paragraph, any State which on the date of enactment of the Child Abuse Amendments of 1984 does not qualify for assistance under this subsection may be granted a waiver of any requirement under paragraph (2) of this subsection—

(i) for a period of not more than one year, if the Secretary makes a finding that such State is making a good-faith effort to comply with any such requirement, and for a second one-year period if the Secretary makes a finding that such State is making substantial progress to achieve such compliance; or

(ii) for a nonrenewable period of not more than two years in the case of a State the legislature of which meets only biennially, if the Secretary makes a finding that such State is making a good-faith effort to comply with any such requirement.

(B) No waiver under subparagraph (A) may apply to any requirement under paragraph (2)(K) of this subsection.[26]

(4) Programs or projects related to child abuse and neglect assisted under part B of title IV of the Social Security Act shall comply with the requirements set forth in clauses (B), (C), (E), (F), and (K) of paragraph (2).[27]

(c)(1) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

(A) the procedures or programs required under clause (K) of subsection (b)(2) of this section;

(B) information and education programs or training programs for the purpose of improving the provision of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

(C) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

(2)(A) The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (i) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of clause (K) of subsection (b)(2) of this section; and (ii) the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions (including compiling, maintaining, updating, and disseminating regional directories of community services and resources (including the names and phone numbers of State and local medical organizations) to assist parents, families, and physicians and seeking to coordinate the availability of appropriate regional education resources for health-care personnel).

(B) Not more than $1,000,000 of the funds appropriated for any fiscal year under section 5 of this Act may be used to carry out this paragraph.

(C) Not later than 210 days after the date of the enactment of the Child Abuse Amendments of 1984, the Secretary shall have the capability of providing and begin to provide the training and technical assistance described in subparagraph (A) of this paragraph.[28]

* * * * * * *

---

[25] P.L. 98-457, §122(3), added clause (K).

[26] P.L. 98-457, §103(b) amended paragraph (3) in its entirety.

[27] P.L. 98-457, §123(b), added paragraph (4) to section 4. Executed as though "section 4" read "section 4(b)".

[28] P.L. 98-457. §123(a)(1), redesignated former subsection (c) as subsection (d).
P.L. 98-457, §123(a)(2), added a new subsection (c).

(h)[29] The Secretary, in consultation with the Advisory Board on Child Abuse and Neglect, shall ensure that a proportionate share of assistance under this Act is available for activities related to the prevention of child abuse and neglect.

* * * * * * *

COORDINATION

SEC. 7. [42 U.S.C. 5106] The Secretary shall promulgate regulations and make such arrangements as may be necessary or appropriate to ensure that there is effective coordination among[30] programs related to child abuse and neglect under this Act and other such programs which are assisted by Federal funds.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act title IV has a footnote referring to P.L. 93-247.]

P.L. 93-288, Approved May 22, 1974 (88 Stat. 143)
Disaster Relief Act of 1974

* * * * * * *

DEFINITIONS

SEC. 102. [42 U.S.C. 5122] As used in this Act—

(1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

(2) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

* * * * * * *

FEDERAL ASSISTANCE

SEC. 302. [42 U.S.C. 5142] (a) In the interest of providing maximum mobilization of Federal assistance under this Act, the President shall coordinate, in such manner as he may determine, the activities of all Federal agencies providing disaster assistance. The President may direct any Federal agency, with or without reimbursement, to utilize its available personnel, equipment, supplies, facilities, and other resources including managerial and technical services in support of State and local disaster assistance efforts. The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency as he may designate.

---

[29] P.L. 98-457, §103(c)(1), redesignated former subsection (e) as subsection (f).
P.L. 98-457, §103(c)(2), added a new subsection (e).
P.L. 98-457, §123(a)(1), redesignated that subsection (e) as subsection (f).
P.L. 99-401, §102(a)(1), redesignated the second subsection (f) as subsection (h).

[30] P.L. 98-457, §106, struck out "between" and substituted "among".

(b) Any Federal agency charged with the administration of a Federal assistance program is authorized, if so requested by the applicant State or local authorities, to modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

(c) Notwithstanding any other provision of law, any repair, restoration, reconstruction, or replacement of farm fencing damaged or destroyed as a result of any major disaster shall be considered an emergency conservation measure eligible for payments under chapter I of the Third Supplemental Appropriation Act, 1957, or any other provision of law.

* * * * * * *

TEMPORARY HOUSING ASSISTANCE

SEC. 404. [42 U.S.C. 5174] (a) The President is authorized to provide, either by purchase or lease, temporary housing, including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. During the first twelve months of occupancy no rentals shall be established for any such accommodations, and thereafter rentals shall be established, based upon fair market value of the accommodations being furnished, adjusted to take into consideration the financial ability of the occupant. Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster, without charge to the United States. The President may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites when he determines such action to be in the public interest.

(b) The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for a period of not to exceed one year or for the duration of the period of financial hardship, whichever is the lesser.

(c) In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition with minimal repairs. No assistance provided under this section may be used for major reconstruction or rehabilitation of damaged property.

(d)(1) Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 311 of this Act requiring nondiscrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) of this section and to the purposes of providing temporary housing for disaster victims in emergencies or in major disasters.

* * * * * * *

UNEMPLOYMENT ASSISTANCE

SEC. 407. [42 U.S.C. 5177] (a) The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than one year after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section to any such individual for a week of unemployment shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) The President is further authorized for the purposes of this Act to provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster.

INDIVIDUAL AND FAMILY GRANT PROGRAMS

Sec. 408. [42 U.S.C. 5178] (a) The President is authorized to make a grant to a State for the purpose of such State making grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this Act, or from other means. The Governor of a State shall administer the grant program authorized by this section.

(b) The Federal share of a grant to an individual or a family under this section shall be equal to 75 per centum of the actual cost of meeting such an expense or need and shall be made only on condition that the remaining 25 per centum of such cost is paid to such individual or family from funds made available by a State. Where a State is unable immediately to pay its share, the President is authorized to advance to such State such 25 per centum share, and any such advance is to be repaid to the United States when such State is able to do so. No individual and no family shall receive any grant or grants under this section aggregating more than $5,000 with respect to any one major disaster.

(c) The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants made under this section.

(d) A State may expend not to exceed 3 per centum of any grant made by the President to it under subsection (a) of this section for expenses of administering grants to individuals and families under this section.

(e) This section shall take effect as of April 20, 1973.

FOOD COUPONS AND DISTRIBUTION

Sec. 409. [42 U.S.C. 5179] (a) Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048) and to make surplus commodities available pursuant to the provisions of this Act.

(b) The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 except as they relate to the availability of food stamps in an area affected by a major disaster.

FOOD COMMODITIES

Sec. 410. [42 U.S.C. 5180] (a) The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) The Secretary of Agriculture shall utilize funds appropriated under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

RELOCATION ASSISTANCE

SEC. 411. [42 U.S.C. 5181] Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

LEGAL SERVICES

SEC. 412. [42 U.S.C. 5182] Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

CRISIS COUNSELING ASSISTANCE AND TRAINING

SEC. 413. [42 U.S.C. 5183] The President is authorized (through the National Institute of Mental Health) to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

COMMUNITY DISASTER LOANS

SEC. 414. [42 U.S.C. 5184] (a) The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this Act.

* * * * * * *

[*Internal References.*—Social Security Act §1612(a)(2)(A)(iii)(II) and §1612(b)(11) cite the Disaster Relief Act of 1974.]

P.L. 93-344, Approved July 12, 1974 (88 Stat. 297)
Congressional Budget and Impoundment Control Act of 1974

* * * * * * *

SEC. 2. [2 U.S.C. 621] The Congress declares that it is essential—

(1) to assure effective congressional control over the budgetary process;

(2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

* * * * * * *

SEC. 3. [2 U.S.C. 622] For purposes of this Act—

* * * * * * *

(6) The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act (notwithstanding section 710(a) of the Social Security Act), for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth for each major functional category, for such fiscal year. Amounts paid by the Federal Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.[1]

* * * * * * *

[*Internal Reference.*—Social Security Act §710(a) has a footnote referring to P.L. 93-344.]

P.L. 93-406, Approved September 2, 1974 (88 Stat. 829)
Employee Retirement Income Security Act of 1974

* * * * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SEC. 2. [29 U.S.C. 1001] * * *

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

* * * * * * *

DEFINITIONS

SEC. 3. [29 U.S.C. 1002] For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

---

[1] P.L. 99-177, §201(a)(1), added paragraph (6).

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this Act providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this title, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * * * * * *

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.[1]

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of the Internal Revenue Code of 1954 is permitted to make payments under section 4223 shall be treated as a party in interest with respect to such trust.

* * * * * * *

---

[1] As in original. Probably should be a comma.

SUBTITLE B—REGULATORY PROVISIONS

* * * * * * *

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. [29 U.S.C. 1025] (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.[2]

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

REPORTS MADE PUBLIC INFORMATION

SEC. 106. [29 U.S.C. 1026] (a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

* * * * * * *

TITLE IV—PLAN TERMINATION INSURANCE

* * * * * * *

SUBTITLE B—COVERAGE

* * * * * * *

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. [29 U.S.C. 1322] (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when section 4021 applies to it.

(b)(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 4021(a)) has been in effect includes the time a previously established plan (within the meaning of section 4021(a)) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

---

[2] P.L. 98-397, §106, added this sentence.

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

* * * * * * *

[*Internal References.*—Social Security Act §209(e)(7) cites §3(2)(B)(ii) and §1106(c) cites §3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406) and §230(d) cites §4022(b)(3)(B) of Public Law 93-406.]

P.L. 93-618, Approved January 3, 1975 (88 Stat. 1978)

Trade Act of 1974

* * * * * * *

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

PETITIONS

Sec. 221. [19 U.S.C. 2271] (a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm)[1] or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

GROUP ELIGIBILITY REQUIREMENTS

Sec. 222. [19 U.S.C. 2272] The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm)[2] as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to[3] such total or partial separation, or threat thereof, and to[4] such decline in sales or production.

---

[1] P.L. 99-272, §13002(a), inserted "(including workers in any agricultural firm or subdivision of an agricultural firm)".

[2] See footnote 1.

[3] P.L. 98-120, §3(a)(1), struck out "were a substantial cause of" and substituted "contributed importantly to".

[4] P.L. 98-120, §3(a)(1), struck out "of" and substituted "to".

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.[5]

DETERMINATIONS BY SECRETARY OF LABOR

SEC. 223. [19 U.S.C. 2273] (a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or—

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION

SEC. 224. [19 U.S.C. 2274] (a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

BENEFIT INFORMATION TO WORKERS

SEC. 225. [19 U.S.C. 2275] The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

---

[5] P.L. 98-120, §3(a)(2), amended this sentence in its entirety.

QUALIFYING REQUIREMENTS FOR WORKERS

SEC. 231. [19 U.S.C. 2291] (a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States, or

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.[6]

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—

(A) is enrolled in a job search program approved by the Secretary under section 237(c), or

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a job search program approved by the Secretary under section 237(c).[7]

(b) If the Secretary determines with respect to any labor market area that—

(1) a high level of unemployment exists,

(2) suitable employment opportunities are not available, and

(3) there are facilities available for the provision of training under section 236 in new or related job classifications,

the Secretary may, in accordance with such regulations as he shall prescribe, require all adversely affected workers who were totally or partially separated in such area and for whom such training is approved under section 236—

(A) to accept such training, or

(B) to search actively for work outside such area,

whichever the worker may choose; except that no worker may be required (i) to accept training or undertake a job search under this subsection until after the first 8 weeks of his eligibility for trade readjustment allowances has expired, or (ii) to accept, or to participate in, such training for a period longer than the remaining period to which he is entitled to such allowances. For purposes of this subsection, the term "labor market area" has the same meaning as is given such term in the Introduction to the Directory of Important Labor Areas, 1980 edition, published by the Department of Labor; except that for any portion of any State which is not included within that term in such Introduction, the county or counties in which that portion is located shall be treated as the applicable labor market area.

---

[6] P.L. 99-272, §13003(b), struck out "the following number of weeks may be treated as such weeks of employment under this sentence:" and clauses (i) through (iii) and substituted "7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.".

[7] P.L. 99-272, §13003(a)(1), added paragraph (5).

(c) If the Secretary determines that—

(1) the adversely affected worker—

(A) has failed to begin participation in the job search program the enrollment in which meets the requirement of subsection (a)(5), or

(B) has ceased to participate in such job search program before completing such job search program, and

(2) there is no justifiable cause for such failure or cessation,

no trade readjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a job search program approved under section 237(c).[8]

WEEKLY AMOUNTS

SEC. 232. [19 U.S.C. 2292] (a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary, including on-the-job training, shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act[9] is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 231(c) or[10] 236(c)) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such[11] training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

SEC. 233. [19 U.S.C. 2293]

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week after the 104[12]-

---

[8] P.L. 99-272, §13003(a)(2), added subsection (c).
[9] P.L. 99-272, §13003(c)(1), struck out a comma and inserted "other than this Act".
[10] P.L. 99-272, §13003(c)(2), inserted "231(c) or".
[11] P.L. 99-272, §13003(c)(3), struck out "the" and substituted "such".
[12] P.L. 99-272, §13003(d)(1), struck out "52" and substituted "104".

week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 231(a)(3)(B)) all rights to that part of his unemployment insurance that is regular compensaton.

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).[13] Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is engaged in such training and has not been determined under section 236(c) to be failing to make satisfactory progress in the training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.[14]

APPLICATION OF STATE LAWS

SEC. 234. [19 U.S.C. 2294] Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

EMPLOYMENT SERVICES

SEC. 235. [19 U.S.C. 2295] The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with cooperating State agencies.

TRAINING

SEC. 236. [19 U.S.C. 2296] (a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected[15] worker,

---

[13] P.L. 98-369, §2671, amended this sentence in its entirety.

[14] P.L. 99-272, §13003(d)(2), added subsection (e).

[15] P.L. 99-272, §13004(a)(1), struck out "a" and substituted "an adversely affected".

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers), and

(E) the worker is qualified to undertake and complete such training,

the Secretary shall (to the extent appropriated funds are available)[16] approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).[17]

(3)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.[18]

(4) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act, and

(D) any other training program approved by the Secretary.[19]

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations.

(c) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.

(d) Notwithstanding any provision of subsection (a)(1), the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

---

[16] P.L. 99-272, §13004(a)(2), struck out "may" and substituted "shall (to the extent appropriated funds are available)".

[17] P.L. 99-272, §13004(a)(6), added paragraph (2).

[18] P.L. 99-272, §13004(a)(6), added paragraph (3).

[19] P.L. 99-272, §13004(a)(6), added paragraph (4).

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).[20]

(e)[21] A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a)[22], because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(f)[23] For purposes of this section[24] the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

JOB SEARCH ALLOWANCES

SEC. 237. [19 U.S.C. 2297] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800[25] for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

---

[20] P.L. 99-272, §13004(a)(7), added subsection (d).
[21] P.L. 99-272, §13004(a)(5), redesignated paragraph (a)(2) as subsection (e).
[22] P.L. 99-272, §13004(a)(3), struck out "paragraph (1)" and substituted "subsection (a)".
[23] P.L. 99-272, §13004(a)(5), redesignated paragraph (a)(3) as subsection (f).
[24] P.L. 99-272, §13004(a)(4), struck out "subsection" and substituted "section".
[25] P.L. 98-369, §2672(a), struck out "$600" and substituted "$800".

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.[26]

RELOCATION ALLOWANCES

SEC. 238. [19 U.S.C. 2298] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certifiction, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b)(1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family, if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.[27]

SUBCHAPTER C—GENERAL PROVISIONS

AGREEMENTS WITH STATES

SEC. 239. [19 U.S.C. 2311] (a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating State agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f),[28] will afford adversely affected workers testing, counseling, referral to training and job search programs[29] , and placement services, (3) will make determinations and approvals regarding job search programs under sections 231(c) and 237(c), and (4)[30] will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Agreements entered into under this section may be made with one or more State or local agencies including—

---

[26] P.L. 99-272, §13005(a), added subsection (c).
[27] P.L. 98-369, §2672(b), struck out "$600" and substituted "$800".
[28] P.L. 99-272, §13004(c)(1), inserted "but in accordance with subsection (f),".
[29] P.L. 99-272, §13003(a)(3)(A), inserted "and job search programs".
[30] P.L. 99-272, §13003(a)(3)(B), redesignated clause (3) as clause (4) and added a new clause (3).

(1) the employment service agency of such State,

(2) any State agency carrying out title III of the Job Training Partnership Act, or

(3) any other State or local agency administering job training or related programs.[31]

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each adversely affected worker to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.[32]

ADMINISTRATION ABSENT STATE AGREEMENT

SEC. 240. [19 U.S.C. 2312] (a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. sec. 405(g)).

PAYMENTS TO STATES

SEC. 241. [19 U.S.C. 2313] (a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS

SEC. 242. [19 U.S.C. 2314] (a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

FRAUD AND RECOVERY OF OVERPAYMENTS

SEC. 243. [19 U.S.C. 2315] (a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

---

[31] P.L. 99-272, §13004(c)(2), added subsection (e).

[32] P.L. 99-272, §13004(c)(2), added subsection (f).

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

PENALTIES

Sec. 244. [19 U.S.C. 2316] Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

AUTHORIZATION OF APPROPRIATIONS

Sec. 245. [19 U.S.C. 2317] There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1986, 1987, 1988, 1989, 1990, and 1991[33], such sums as may be necessary to carry out the purposes of this chapter.

[Sec. 246. Repealed.[34]]

DEFINITIONS

Sec. 247. [19 U.S.C. 2319] For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.[35]]

(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

---

[33] P.L. 98-120, §2(a), struck out "each of fiscal years 1982 and 1983" and substituted "each of the fiscal years 1982 through 1985".

P.L. 99-272, §13008(a), struck out "1982 through 1985" and substituted "1986, 1987, 1988, 1989, 1990, and 1991".

[34] P.L. 97-35, §2513(c), 95 Stat. 889.

[35] P.L. 97-35, §2511(1), 95 Stat. 888.

(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

[(7) Repealed.[36]]

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.[37]

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.[38]

REGULATIONS

SEC. 248. [19 U.S.C. 2320] The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

SUBPENA POWER

SEC. 249. [19 U.S.C. 2321] (a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

---

[36] P.L. 97-35, §2511(1), 95 Stat. 888.
[37] P.L. 99-272, §13004(b), added paragraph (16).
[38] P.L. 99-272, §13005(b), added paragraph (17).

* * * * * * *

[*Internal Reference.*—Social Security Act title IX has a footnote referring to P.L. 93-618.]

P.L. 93-638, Approved January 4, 1975 (88 Stat. 2203)
Indian Self-Determination and Education Assistance Act

* * * * * * *

TITLE I—INDIAN SELF-DETERMINATION ACT

SEC. 101. [25 U.S.C. 450 note] This title may be cited as the "Indian Self-Determination Act".

* * * * * * *

SEC. 105.

* * * * * * *

(e) [25 U.S.C. 450i(a)] Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203)[1] on or before December 31, 1988[2], in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

* * * * * * *

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

* * * * * * *

[*Internal Reference.*—Social Security Act §210(a)(5)(B)(i)(V) cites §105(e)(2) of the Indian Self-Determination Act.]

P.L. 94-114, Approved October 17, 1975 (89 Stat. 577)
[Indian Tribes—Submarginal Lands]

[25 U.S.C 459] That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 2(a) of this Act, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

---

[1] P.L. 89-702, §210(a), as amended by P.L. 98-129, §2, inserted ", the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203)".

[2] P.L. 99-221, §3(a), struck out "1985" and substituted "1988".

(b) The property conveyed by this Act shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this Act shall not convey the title to any part of the lands or any interest therein that prior to enactment of this Act have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

(c) The right, title, and interest of the United States of America in all of the lands, including the improvements now thereon (title to which is in the United States), acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriation Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617), together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, and which lands are now administered by the Secretary of the Interior for the use or benefit of (1) Ramah Navajo Indians, are hereby declared to be held in trust for the Ramah Band of the Navajo Tribe, and (2) Choctaw Indians of Mississippi, except lands subject to the Act of June 21, 1939 (53 Stat. 851), are hereby declared to be held in trust for the Mississippi Band of Choctaw Indians; excepting valid rights-of-way of record.

Sec. 2. [25 U.S.C. 459a] (a) The lands, declared by section 1(a) of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	* * *
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	* * *
2. Blackfeet Tribe.	* * *
3. Cherokee Nation of Oklahoma.	* * *
4. Cheyenne River Sioux Tribe.	* * *
5. Crow Creek Sioux Tribe.	* * *
6. Lower Brule Sioux Tribe.	* * *
7. Devils Lake Sioux Tribe.	* * *
8. Fort Belknap Indian Community.	* * *
9. Assiniboine and Sioux Tribes.	* * *
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	* * *
11. Keweenaw Bay Indian Community.	* * *
12. Minnesota Chippewa Tribe.	* * *
13. Navajo Tribe.	* * *
14. Ogala Sioux Tribe.	* * *
15. Rosebud Sioux Tribe.	* * *
16. Shoshone-Bannock Tribes.	* * *
17. Standing Rock Sioux Tribe.	* * *

(b) The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

* * * * * * *

Sec. 5. [25 U.S.C. 459d] (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

Sec. 6. [25 U.S.C. 459e] All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7); 1002(a)(8); 1402(a)(8); 1602(a)(14)(State); 1612(b); and 1613(a) have footnotes referring to P.L. 94-114.]

P.L. 94-135, Approved November 28, 1975 (89 Stat. 713)
Older Americans Amendments of 1975

* * * * * * *

TITLE III—PROHIBITION OF DISCRIMINATION BASED ON AGE

SHORT TITLE

Sec. 301. [42 U.S.C. 6101 note] The provisions of this title may be cited as the "Age Discrimination Act of 1975".

STATEMENT OF PURPOSE

Sec. 302. [42 U.S.C. 6101] It is the purpose of this title to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance[1].

PROHIBITION OF DISCRIMINATION

Sec. 303. [42 U.S.C. 6102] Pursuant to regulations prescribed under section 304, and except as provided by section 304(b) and section 304(c), no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

REGULATIONS

Sec. 304. [42 U.S.C. 6103] (a)(1) Not later than one year after the transmission of the report required by section 307(b), or two and one-half years after the date of the enactment of this Act, whichever occurs first, the Secretary of Health, Education, and Welfare[2] shall publish in the Federal Register proposed general regulations to carry out the provisions of section 303.

* * * * * * *

---

[1] P.L. 99-272, §14001(b)(4), struck out ", including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)".

[2] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

(b)(1) It shall not be a violation of any provision of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c)(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974[3] (29 U.S.C. 801, et seq.), as amended, nothing in this title shall be construed to authorize action under this title by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this title shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

ENFORCEMENT

SEC. 305. [42 U.S.C. 6104] (a) The head of any Federal department or agency who prescribes regulations under section 304 may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1). Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 304 withholds funds pursuant to subsection (a), he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 304.

(c) No action may be taken under subsection (a) until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) In the case of any action taken under subsection (a), the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e)(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education, and Welfare[4], the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

---

[3] P.L. 97-300, §183, deemed this reference to be to the Job Training Partnership Act.

[4] See footnote 2.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) With respect to actions brought for relief based on an alleged violation of the provisions of this title, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

JUDICIAL REVIEW

Sec. 306. [42 U.S.C. 6105] (a) Any action by any Federal department or agency under section 305 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) In the case of any action by any Federal department or agency under section 305 which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5, United States Code. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

* * * * * * *

REPORTS

Sec. 308. [42 U.S.C. 6106a] (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare[5] a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare[6] shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

DEFINITIONS

Sec. 309. [42 U.S.C. 6107] For purposes of this title—

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health, Education, and Welfare[7]; and

(3) the term "Federal department or agency" means any agency as defined in section 551 of title 5, United States Code, and includes the United States Postal Service and the Postal Rate Commission.

[*Internal References.*—Social Security Act §§508(a)(1) and (b)(2) cite the Age Discrimination Act of 1975 (Title III of P.L. 94-135).]

P.L. 94-202, Approved January 2, 1976 (89 Stat. 1135)
[Social Security—Hearings and Review Procedures]

* * * * * * *

Sec. 8.

* * * * * * *

---

[5] See footnote 2.
[6] See footnote 2.
[7] See footnote 2.

(e) [42 U.S.C. 401 note] Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(f) [42 U.S.C. 401 note] The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare specified in section 232 of such Act, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

* * * * * * *

(k) [42 U.S.C. 418 note] Notwithstanding the provisions of section 218(i) of the Social Security Act, nothing contained in the amendments made by the preceding provisions of this section shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act §§201(g)(1)(A)(ii) and (g)(4) have footnotes referring to P.L. 94-202.]

P.L. 94-375, Approved August 3, 1976 (90 Stat. 1067)

Housing Authorization Act of 1976

* * * * * * *

Sec. 2.

* * * * * * *

(h) [42 U.S.C. 1382 note] Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949 may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act. This subsection shall become effective on October 1, 1976.

* * * * * * *

[*Internal References.*—Social Security Act §§1612(b) and 1613(a), and P.L. 73-479, P.L. 81-171, and P.L. 89-117 have footnotes referring to P.L. 94-375.]

P.L. 94-437, Approved September 30, 1976 (90 Stat. 1400)
Indian Health Care Improvement Act

* * * * * * *

DEFINITIONS

SEC. 4. [25 U.S.C. 1603] For purposes of this Act—

(a) "Secretary", unless otherwise designated, means the Secretary of Health and Human Services.

(b) "Service" means the Indian Health Service.

(c) "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 102, 103, and 201(c)(5), such terms shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(d) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) "Tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(f) "Urban Indian" means any individual who resides in an urban center, as defined in subsection (g) hereof, and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.

(g) "Urban center" means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under title V, as determined by the Secretary.

(h) "Urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

(i) "Rural Indian" means any individual who resides in a rural community as defined in subsection (j), who is an Indian within the meaning of subsection (c), and who is not otherwise eligible to receive health services from the Service.

(j) "Rural community" means any community that—

(1) is not located on a Federal Indian reservation or trust area;

(2) is not an Alaskan Native village;

(3) is not an urban center; and

(4) has a sufficient rural Indian population with unmet health needs, as determined by the Secretary, to warrant assistance under title V of this Act.

(k) "Rural Indian organization" means a nonprofit corporate body governed by a board of directors controlled by rural Indians and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

* * * * * * *

SEC. 401. * * *

(c) [42 U.S.C. 1395qq note] Any payments received for services provided to beneficiaries hereunder shall not be considered in determining appropriations for health care and services to Indians.

(d) [42 U.S.C. 1395qq note] Nothing herein authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

SEC. 402. * * *

(b) [42 U.S.C. 1396j note] The Secretary is authorized to enter into agreements with the appropriate State agency for the purpose of reimbursing such agency for health care and services provided in Service facilities to Indians who are eligible for medical assistance under title XIX of the Social Security Act, as amended.

(c) [42 U.S.C. 1396j note] Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility) is entitled under a State plan approved under title XIX of the Social Security Act by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) [42 U.S.C. 1396j note] Any payments received for services provided recipients hereunder shall not be considered in determining appropriations for the provision of health care and services to Indians.

* * * * * * *

REPORT

Sec. 403. [25 U.S.C. 1671 note] The Secretary shall include in his annual report required by section 701 an accounting on the amount and use of funds made available to the Service pursuant to this title as a result of reimbursements through titles XVIII and XIX of the Social Security Act, as amended.

* * * * * * *

REPORTS

Sec. 701. [25 U.S.C. 1671] The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this Act. Within three months after the end of fiscal year 1979, the Secretary shall review expenditures and progress made under this Act and make recommendations to the Congress concerning any additional authorizations for fiscal years 1981 through 1984 for programs authorized under this Act which he deems appropriate. In the event the Congress enacts legislation authorizing appropriations for programs under this Act for fiscal years 1981 through 1984, within three months after the end of fiscal year 1983, the Secretary shall review programs established or assisted pursuant to this Act and shall submit to the Congress his assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and insure a health status for Indians, which are at a parity with the health services available to, and the health status, of the general population.

REGULATIONS

Sec. 702. [25 U.S.C. 1672]

* * * * * * *

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to this Act: *Provided,* That, prior to any revision of or amendment to such rules or regulations, the Secretary shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.

* * * * * * *

[*Internal References.*— Social Security Act §§1880(a), 1905(b), and 1911(a) cite §4 and §1880(d) cites §§403 and 701 of the Indian Health Care Improvement Act. Social Security Act §1901 and the catchlines to §§205, 1102, 1861, 1871, 1880, and 1911 have footnotes referring to P.L. 94-437.]

P.L. 94-505, Approved October 15, 1976 (90 Stat. 2429)
[Shriners' Hospital—Inspector General]

* * * * * * *

TITLE II—OFFICE OF INSPECTOR GENERAL

SEC. 201. [42 U.S.C 3521] In order to create an independent and objective unit—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Health, Education, and Welfare;

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy and efficiency in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in the Department of Health, Education, and Welfare an Office of Inspector General.

OFFICERS

SEC. 202. [42 U.S.C. 3522] (a) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Under Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(b) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that office, act as Inspector General.

(c) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(d) The Inspector General and the Deputy shall each be subject to the provisions of subchapter III of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.

(e) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 206(a)(1), and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 206(a)(2).

DUTIES AND RESPONSIBLITIES

SEC. 203. [42 U.S.C. 3523] (a) It shall be the duty and responsibility of the Inspector General—

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, or (B) the identification and prosecution of participants in such fraud or abuse; and

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by section 4 [sic] and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b) In carrying out the responsibilities specified in subsection (a)(1), the Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining the appropriate use of non-Federal auditors;

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1); and

(4) shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(c) In carrying out the duties and responsibilities provided by this Act, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view to avoiding duplication and insuring effective coordination and cooperation.

(d) The Inspector General shall establish within his office an appropriate and adequate staff with specific responsibility for devoting their full time and attention to antifraud and antiabuse activities relating to the medicaid, medicare, renal disease, and maternal and child health programs. Such staff shall report to the Deputy.

REPORTS

SEC. 204. [42 U.S.C. 3524] (a) The Inspector General shall, not later than May 31 and November 30 of each year, submit to the Secretary and the Congress semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiences identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous reports under this section on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the Secretary under section 205(b)(2) during the reporting period; and

(6) information concerning the numbers and types of audit reports completed by the Office during the reporting period.

(b) Within sixty days of the transmission of each semiannual report to the Congress, the Secretary shall make copies of such report available to the public upon request and at a reasonable cost.

(c) The Inspector General shall report immediately to the Secretary, and within seven calendar days thereafter to the appropriate committees or subcommittees of the Congress, whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

(d) The Inspector General (A) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (B) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

(e) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsections (a) and (b) to the Secretary sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

AUTHORITY; ADMINISTRATION PROVISIONS

SEC. 205. [42 U.S.C. 3525] (a) In addition to the authority otherwise provided by this Act, the Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this Act;

(2) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(3) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court;

(4) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(5) in the event that a budget request for the Office of Inspector General is reduced, before submission to Congress, to an extent which the Inspector General deems seriously detrimental to the adequate performance of the functions mandated by this Act, the Inspector General shall so inform the Congress without delay;

(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(7) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;

(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necesssary to carry out the provisions of this Act.

(b)(1) Upon request of the Inspector General for information or assistance under subsection (a)(2), the head of any Federal agency involved shall, insofar as is practicable, and not in contravention of any existing statutory restriction, or regulation of the Federal agency from which the information is requested, furnish to the Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(2) is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary and to the appropriate committees or subcommittees of the Congress without delay.

(3) In the event any record or other information requested by the Inspector General under subsection (a)(1) or (a)(2) is not considered to be available under the provisions of section 552a(b)(1), (3), or (7) of title 5, United States Code, such record or information shall be available to the Inspector General in the same manner and to the same extent it would be available to the Comptroller General.

(c) The Secretary shall provide the Inspector General and his staff with appropriate and adequate office space at central and field office locations of the Department, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d)(1) The Inspector General shall receive compensation at the rate provided for level IV of the Executive Schedule by section 5315 of title 5, United States Code.

(2) The Deputy shall receive compensation at the rate provided for level V of the Executive Schedule by section 5316 of title 5, United States Code.

TRANSFER OF FUNCTIONS

SEC. 206. [42 U.S.C. 3526] (a) There are hereby transferred to the Office of Inspector General the functions, powers, and duties of—

(1) the agency of the Department referred to as the "HEW Audit Agency";

(2) the office of the Department referred to as the "Office of Investigations"; and

(3) such other offices or agencies, or functions, powers, or duties thereof, as the Secretary may, with the consent of the Inspector General, determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act.[1]

except that there shall not be transferred to the Inspector General under clause (3) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in the Office to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

DEFINITIONS

SEC. 207. [42 U.S.C. 3527] As used in this Act—

(1) the term "Secretary" means the Secretary of Health, Education, and Welfare;

(2) the term "Department" means the Department of Health, Education, and Welfare;

(3) the term "Inspector General" means the Inspector General of the Department;

(4) the term "Deputy" means the Deputy Inspector General of the Department; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5, United States Code, but shall not be construed to include the General Accounting Office.

* * * * * * *

[*Internal Reference.*—Social Security Act §1126(a) has a footnote referring to P.L. 94-505.]

P.L. 94-566, Approved October 20, 1976 (90 Stat. 2667)

Unemployment Compensation Amendments of 1976

* * * * * * *

SEC. 116. * * *

(g) [26 U.S.C. 3304 note] TRANSFER OF FUNDS.—The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954 until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code.

PART II—TRANSITIONAL PROVISIONS

FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD

SEC. 121. [26 U.S.C. 3304 note] (a) GENERAL RULE.—If any State, the unemployment compensation law of which is approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1954, provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1978, on the basis of previously uncovered services, the Secretary shall pay to the unemployment fund of such State an amount equal to the Federal reimbursement for any compensation paid for a week of unemployment beginning on or after January 1, 1978, to any individual whose base period wages include wages for previously uncovered services.

---

[1] Punctuation as in original.

(b) Previously Uncovered Services.—For purposes of this section, the term "previously uncovered services" means, with respect to any State, services—

(1) which were not covered by the State unemployment compensation law, at any time, during the 1-year period ending December 31, 1975; and

(2) which—

(A) are agricultural labor (as defined in section 3306(k) of the Internal Revenue Code of 1954) or domestic services referred to in section 3306(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act) and are treated as employment (as defined in section 3306(c) of such Code) by reason of the amendments made by this Act, or

(B) are services to which section 3309(a)(1) of such Code applies by reason of the amendments made by this Act.

(c) Federal Reimbursement.—

(1) In general.—For purposes of this section, the Federal reimbursement for compensation paid to any individual for any week of unemployment shall be an amount which bears the same ratio to the amount of such compensation as the amount of the individual's base period wages which are attributable to previously uncovered services which are reimbursable bears to the total amount of the individual's base period wages.

(2) Reimbursable services.—For purposes of determining the amount of the Federal reimbursement for compensation paid to any individual for any week of unemployment, previously uncovered services shall be treated as being reimbursable—

(A) if such services were performed—

(i) before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978; or

(ii) before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978; and

(B) to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was not paid to such individual on the basis of such services.

(3) Denial of payment.—No payment may be made under subsection (a) to any State in respect of any compensation for which the State is entitled to any reimbursement under the provisions of any Federal law other than this Act or the Federal-State Extended Unemployment Compensation Act of 1970.

(d) Experience Rating of Certain Employers.—The unemployment compensation law of any State may, without being deemed to violate the standards set forth in section 3303(a) of the Internal Revenue Code of 1954, provide that the experience-rating account of any employer shall not be charged for the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State law not provided for the payment of compensation on the basis of such previously uncovered services.

(e) Certain Nonprofit Employers.—The unemployment compensation law of any State may provide that any organization which elects to make payments (in lieu of contributions) into the State unemployment compensation fund as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 shall not be liable to make such payments with respect to the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State not provided for the payment of compensation on the basis of such previously uncovered services.

(f) Payments Made Monthly.—Payments under subsection (a) shall be made monthly, prior to audit or settlement by the General Accounting Office, on the basis of estimates by the Secretary of the amount payable to such State for such month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior month were greater or less than the amounts which should have been paid to such State. Such estimates may be made on the basis of such statistical, sampling, or other methods as may be agreed upon by the Secretary and the State.

(g) Definitions.—For purposes of this section—

(1) State.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(3) BENEFIT YEAR.—The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law.

(4) BASE PERIOD.—The term "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(5) UNEMPLOYMENT FUND.—The term "unemployment fund" has the meaning given to such term by section 3306(f) of the Internal Revenue Code of 1954.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out the purposes of this section.

* * * * * * *

TITLE IV—NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

SEC. 411. [26 U.S.C. 3304 note] (a) ESTABLISHMENT OF COMMISSION.—There is established a National Commission on Unemployment Compensation (hereinafter in this section referred to as the "Commission") which shall consist of thirteen members who shall be appointed as follows:

(1) Three members appointed by the President pro tempore of the Senate.

(2) Three members appointed by the Speaker of the House of Representatives.

(3) Seven members appointed by the President.

In making appointments under the preceding sentence, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the President shall consult with each other to insure that there will be a balanced representation of interested parties on the Commission. The Commission shall consist of at least one representative of labor, industry, the Federal Government, State government, local government, and small business. The President shall designate one of the members to serve as Chairman of the Commission. Seven members shall constitute a quorum. Any vacancies in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(b) DUTIES OF THE COMMISSION.—The Commission shall study and evaluate the present unemployment compensation programs in order to assess the long-range needs of the programs, to develop alternatives, and to recommend changes in the programs. Such study and evaluation shall include, without being limited to—

(1) examination of the adequacy, and economic and administrative impacts, of the changes made by this Act in coverage, benefit provisions, and financing;

(2) identification of appropriate purposes, objectives, and future directions for unemployment compensation programs; including railroad unemployment insurance;

(3) examination of issues and alternatives concerning the relationship of unemployment compensation to the economy, with special attention to long-range funding requirements and desirable methods of program financing;

(4) examination of eligibility requirements, disqualification provisions, and factors to consider in determining appropriate benefit amounts and duration;

(5) examination of (A) the problems of claimant fraud and abuse in the unemployment compensation programs (B) the adequacy of present statutory requirements and administrative procedures designed to protect the programs against such fraud and abuse and (C) problems of claimants in obtaining prompt processing and payment of their claims for benefits and any appropriate measures to relieve such problems;

(6) examination of the relationship between unemployment compensation programs and manpower training and employment programs;

(7) examination of the appropriate role of unemployment compensation in income maintenance and its relationship to other social insurance and income maintenance programs;

(8) conduct of such surveys, hearings, research, and other activities as it deems necessary to enable it to formulate appropriate recommendations, and to obtain relevant information, attitudes, opinions, and recommendations from individuals and organizations representing employers, employees, and the general public;

(9) review of the present method of collecting and analyzing present and prospective national and local employment and unemployment information and statistics;

(10) identification of any weaknesses in such method and any problem which results from the operation of such method;

(11) formulation of any necessary or appropriate new techniques for the collection and analysis of such information and statistics; and

(12) examination of the feasibility and advisability of developing or not developing Federal minimum benefit standards for State unemployment insurance program.

(c) Powers of the Commission.—

(1) Hearings.—The Commission, or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this section, hold such hearing, take such testimony, receive such evidence, take such oaths and sit and act at such times and places as the Commission may deem appropriate and may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

(2) Staff.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional personnel as he deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of such title and any additional personnel may not receive pay in excess of the maximum annual rate of basic pay in effect for grade GS-15 of such General Schedule, and

(B) obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(3) Contracts.—The Commission is authorized to negotiate and enter into contracts with organizations, institutions, and individuals to carry out such studies, surveys, or research and prepare such reports as the Commission determines are necessary in order to carry out its duties.

(d) Cooperation of Other Federal Agencies.—

(1) Information.—Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.

(2) Services.—The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable and otherwise, as may be agreed between the department or agency and the Chairman of the Commission. All such requests shall be made by the Chairman of the Commission.

(3) Department of labor.—The Department of Labor shall provide support for the Commission and shall perform such other functions with respect to the Commission as may be required by the provisions of the Federal Advisory Committee Act.

(e) Pay and Travel Expenses.—

(1) Pay.—

(A) In general.—Members of the Commission who are not full-time officers or employees of the United States shall be paid compensation at a rate not to exceed the per diem equivalent of the rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) during which they are engaged in the performance of services for the Commission.

(B) Officers or employees of the united states.—Except as provided in paragraph (2), members of the Commission who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Commission.

(2) Travel expenses.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(f) Interim Reports.—The Commission shall, from time to time, transmit to the President and the Congress such interim reports as the Commission deems appropriate.

(g) Final Report.—The Commission shall transmit to the President and the Congress not later than July 1, 1980, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

(h) TERMINATION.—On the ninetieth day after the date of submission of its final report to the President, the Commission shall cease to exist.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(j) EXEMPTION FROM REQUIREMENTS FOR OFFICE OF MANAGEMENT AND BUDGET CLEARANCE.—

(1) FEDERAL REPORTS ACT.—The requirements of chapter 35 of title 44, United States Code, shall not apply to the Commission.

(2) REPORTS TO CONGRESS.—Any reports submitted to the Congress by the Commission shall be submitted directly to the Congress and shall not be subject to any requirements for clearance of reports by the Office of Management and Budget.

PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

SEC. 503. [42 U.S.C. 1396a note] In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act but is not eligible for benefits under title XVI of such Act, in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act which have occurred pursuant to section 215(i) of such Act, in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II, and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act or of the type described in section 212(a) of Public Law 93-66 shall be deemed to be benefits under title XVI of the Social Security Act.

* * * * * * *

SEC. 508. * * *

(b) [42 U.S.C. 603a] PROVISION FOR REIMBURSEMENT OF EXPENSES.—For purposes of section 403 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a), by a State or local agency administering a State plan approved under part A of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan.

* * * * * * *

MODIFICATION OF AGREEMENTS

SEC. 604. [26 U.S.C. 3304 note] The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title.

Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period.

* * * * * * *

[*Internal References.*—Social Security Act §454(19)(A) cites §508 of the Unemployment Compensation Amendments of 1976 and §1921(a)(5)(E) cites §503 of P.L. 94-566. Social Security Act §403(a)(end) and the catchlines to Social Security Act titles II and XIX; title IV, Part A (at §401); §§403 and 1634 and P.L. 93-66, §212(a)(3)(E)(ii) have footnotes referring to P.L. 94-566.]

P.L. 94-581, Approved October 21, 1976 (90 Stat. 2842)

Veterans Omnibus Health Care Act of 1976

* * * * * * *

SEC. 115.

* * * * * * *

(c) [38 U.S.C. 5053 note] At such time as the rates and procedures described in section 5053(d) of title 38, United States Code, are prescribed, the Secretary of Health, Education, and Welfare;[1] in consultation with the Administrator of Veterans' Affairs, shall submit to the Committee on Ways and Means and the Committee on Veterans' Affairs of the House of Representatives and to the Committee on Finance and the Committee on Veterans' Affairs of the Senate a full report describing such rates and procedures (and any such additional matters relating to the formulation of such rates and procedures as the Secretary may consider pertinent).[2]

* * * * * * *

[*Internal References.*—Social Security Act §§1862(b)(1) and (b)(3)(B)(ii)(II)(b) have footnotes referring to P.L. 94-581.]

P.L. 95-30, Approved May 23, 1977 (91 Stat. 126)

Tax Reduction and Simplification Act of 1977

* * * * * * *

AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE WORK INCENTIVE PROGRAM

SEC. 401. (a) [42 U.S.C. 602 note] MATCHING FUNDS DISREGARDED.—The Secretary of Health, Education, and Welfare and the Secretary of Labor are authorized to carry out the work incentive program under title IV of the Social Security Act from the sums appropriated pursuant to this Act without regard to the requirements for non-Federal matching funds contained in sections 402(a)(19)(C), 402(a)(19)(G), 403(a)(3)(A), 403(d), and 435 of the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act, Title IV, Part A (§401) and §403(a)(3)(A) have footnotes referring to P.L. 95-30.]

---

[1] As in original. Semicolon should be a comma, and reference should be to "Secretary of Health and Human Services".

[2] See 38 U.S.C. §5053(d), with respect to provision of hospital care or medical services to individuals entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act, in Vol. II, p. 215.

P.L. 95-202, Approved November 23, 1977 (91 Stat. 1433)
GI Bill Improvement Act of 1977

* * * * * * *

TITLE IV—WOMEN'S AIR FORCES SERVICE PILOTS

SEC. 401. [38 U.S.C. 106 note] (a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II), or the service of any person in any other similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, shall be considered active duty for the purposes of all laws administered by the Veterans' Administration if the Secretary of Defense, pursuant to regulations which the Secretary shall prescribe—

(A) after a full review of the historical records and all other available evidence pertaining to the service of any such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group constituted active military service, and

(B) in the case of any such group with respect to which such Secretary has made an affirmative determination that the service of such group constituted active military service, issues to each member of such group a discharge from such service under honorable conditions where the nature and duration of the service of such member so warrants.

Discharges issued pursuant to the provisions of the first sentence of this paragraph shall designate as the date of discharge that date, as determined by the Secretary of Defense, on which such service by the person concerned was terminated.

(2) In making a determination under clause (A) of paragraph (1) of this subsection with respect to any group described in such paragraph, the Secretary of Defense may take into consideration the extent to which—

(A) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,

(B) the members of such group were subject to military justice, discipline, and control,

(C) the members of such group were permitted to resign,

(D) the members of such group were susceptible to assignment for duty in a combat zone, and

(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

(b)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title as a result of the enactment of subsection (a) of this section.

(2) The provisions of section 106(a)(2) of title 38, United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Veterans' Administration, as a result of implementation of the provisions of subsection (a) of this section.

(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person's service.[1]

* * * * * * *

[*Internal References.*—Social Security Act §210(m) has a footnote referring to P.L. 95-202.]

P.L. 95-210, Approved December 13, 1977 (91 Stat. 1485)
[Social Security—Rural Health Clinic Services]

SECTION 1.

* * * * * * *

(e) [42 U.S.C 1395x note] Any private, nonprofit health care clinic that—

(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

(2) meets the definition of a rural health clinic under section 1861(aa)(2) or section 1905(l) of the Social Security Act, except for clause (i) of section 1861(aa)(2),

---

[1] P.L. 98-94, §1263(a), added subsection (c).

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act, as satisfying the definition of a rural health clinic under such section.

* * * * * * *

DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS

SEC. 3. [42 U.S.C. 1395b-1 note] (a) The Secretary shall provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under title XVIII of the Social Security Act and, notwithstanding any other provision of such title, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under such title if provided by a physician.

(b) The demonstration projects developed under subsection (a) shall be of sufficient scope and carried out on a broad enough scale to allow the Secretary to evaluate fully—

(1) the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner;

(2) the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics;

(3) the appropriate definition for such clinics;

(4) the appropriate criteria to use for the purposes of designating urban medically underserved areas; and

(5) such other possible changes in the provisions of title XVIII of the Social Security Act as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics.

(c) Grants, payments under contracts, and other expenditures made for demonstration projects under this section shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each trust fund shall be determined by the Secretary giving due regard to the purposes of the demonstration projects.

(d) The Secretary shall submit to the Congress, no later than January 1, 1981, a complete, detailed report on the demonstration projects conducted under subsection (b). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of carrying out such demonstration projects.

(e) As used in this section, the terms "physician assistant" and "nurse practitioner" have the meanings given such terms in section 1861(aa)(3) of the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act §§1861(aa), 1910(a) and P.L. 90-248, §402 have footnotes referring to P.L. 95-210.]

P.L. 95-216, Approved December 20, 1977 (91 Stat. 1509)
Social Security Amendments of 1977

* * * * * * *

REVOCATION OF EXEMPTION FROM COVERAGE BY CLERGYMEN

SEC. 316. [26 U.S.C. 1402 note] (a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1954, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code), if such application is filed—

(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act (without regard to section 202(j)(1) or 223(b) of such Act), and

(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act.

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1954 and title II of the Social Security Act), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1954 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

* * * * * * *

SEC. 317.

* * * * * * *

(b) * * *

(4) [26 U.S.C. 1401 note] Notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual.

* * * * * * *

REDUCED BENEFITS FOR SPOUSES RECEIVING GOVERNMENT PENSIONS

SEC. 334.

* * * * * * *

(g) [42 U.S.C. 402 note] (1) The amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(A)(i)[1] to whom there is payable for any month within the 60-month period beginning with the month in which this Act is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met[2]; and

---

[1] P.L. 98-617, §2(b)(1)(A), redesignated subparagraph (A) as clause (i).

(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.

(h) [42 U.S.C. 402 note] In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsction (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(1)(A)[3] to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2)) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met[4]; and

(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).

* * * * * * *

NATIONAL COMMISSION ON SOCIAL SECURITY

ESTABLISHMENT OF COMMISSION

SEC. 361. [42 U.S.C. 907a] (a)(1) There is hereby established a commission to be known as the National Commission on Social Security (hereinafter referred to as the "Commission").

(2)(A) The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairman of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate.

(B) At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include representatives of the private insurance industry and of recipients and potential recipients of benefits under the programs involved as well as individuals whose capacity is based on a special knowledge or expertise in those programs. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission.

---

[2] P.L. 98-617, §2(b)(1)(B), added clause (ii).
[3] P.L. 98-617, §2(b)(2)(A), redesignated paragraph (1) as subparagraph (A).
[4] P.L. 98-617, §2(b)(2)(B), added subparagraph (B).

(D) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(E) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) Members of the Commission shall be appointed for a term which shall end on April 1, 1981.

(G) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(3) Members of the Commission shall receive $138 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(4) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(b)(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by title II of the Social Security Act; and

(B) the health insurance programs established by title XVIII of such Act.

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirement income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under the Social Security Act; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c)(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission's plans for conducting the study, investigation, and review under subsection (b), with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b), together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and the Commission shall cease to exist on April 1, 1981.

(d)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5, United States Code.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) There are hereby authorized to be appropriated such sums as may be necessary to carry out this section.

[(i) Stricken.[5]]

* * * * * * *

[*Internal References.*—Social Security Act §§215(a)(1)(C)(ii) and 230(d) cite the Social Security Amendments of 1977 and §203(a)(9)(B) cites §204. The catchlines for §§202(b), (c), (e), (f), and (g), and title VII and §§211(c)(4) and (c)(5) and 706(d)(end) have footnotes referring to P.L. 95-216.]

P.L. 95-250, Approved March 27, 1978 (92 Stat. 163)
[Redwood National Park]

* * * * * * *

TITLE II

DEFINITIONS

SEC. 201. [None assigned.] As used in this title, the term—

(1) "Secretary" unless otherwise indicated, means the Secretary of the Department of Labor;

(2) "expansion area" means the area indicated as "Proposed Additions" (exclusive of the park protection zone) on the map entitled "Additional Lands, Redwood National Park, Humboldt County, California", numbered 167-80005-D and dated March 1978. The number of acres authorized to be included within the expansion area is forty-eight thousand acres, as further provided herein;

---

[5] P.L. 98-369, §2349(b)(3), struck out subsection (i).

(3) "employee" means a person employed by an affected employer and, with such exceptions as the Secretary may determine, in an occupation not described by section 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. 2213(a)(1));

(4) "contract employees" are employees performing work pursuant to a contract or agreement for services within or directly related to the expansion area between an affected contract employer and an affected woods employer;

(5) "industry employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or successor by purchase, merger, or other form of acquisition), of which a working portion or division is an affected employer;

(6) "affected employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, and other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer;

(7) "affected woods employer" means an affected employer engaged in the harvest of redwood timber who owns at least 3 per centum of the number of acres authorized to be included within the expansion area on January 1, 1977, and on the date of enactment of this section: *Provided,* That an affected woods employer shall be only that major portion or division of the industry employer directly responsible for such harvesting operations;

(8) "affected mill employer" means an affected employer engaged in sawmill, plywood, and other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (A) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar year 1977, or (B) is a wholly owned mill of an affected woods employer: *Provided,* That an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations;

(9) "affected contract employer" means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts;

(10) "covered employee" means an employee who—

(A) had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, has at least twelve months of creditable service as of the date of enactment of this section, and has performed work for one or more affected employers on or after January 1, 1977, or

(B) has performed work for one or more affected employers for at least one thousand hours from January 1, 1977, through the period to the date of enactment of this section, and has a continuing employment relationship with an affected employer, as determined by the Secretary, as of the date of enactment of this section or, if laid off on or after May 31, 1977, had such a relationship as of the date of such layoff;

(11) "affected employee" means a covered employee who is either totally or partially laid off by an affected employer within a time period beginning on or after May 31, 1977, and ending September 30, 1980, unless extended, as provided in section 203, or is determined by the Secretary to be adversely affected by the expansion of the Redwood National Park. An employee shall be deemed adversely affected as of the date of the employee's layoff, downgrading, or termination;

(12) "total layoff" means a calendar week during which affected employers have made no work available to a covered employee and made no payment to said covered employee for time not worked, and "partial layoff" means a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the layoff or vacation replacement benefit that would have been payable for that week had said covered employee suffered a total layoff: *Provided,* That the terms "total layoff" and "partial layoff" shall also apply to a covered employee who had received any workers' compensation benefits or unemployment compensation disability benefits after said covered employee becomes able to work and available for work and is otherwise within the meaning of total layoff and partial layoff as defined in this paragraph;

(13) "Federal agency" has the same meaning as "agency" in section 552(c) of title 5, United States Code;

(14) "suitable work" shall be defined—

(A) as set forth in the California Unemployment Insurance Code, or Federal law if applicable, ulnless otherwise more restrictively defined by the Secretary, taking into account the unique characteristics of logging and related work; and

(B) with respect to an employee who has completed retraining paid for by the Secretary, as a job paying no less than the prevailing wage rate in the area for the occupation for which said employee was retrained; or

(C) as a job comparable with that which said employee would be required to accept pursuant to the seniority provisions of the applicable collective-bargaining agreement (or, if not covered by such an agreement, in accordance with the usual practice of the affected employer);

(15) "seniority" with respect to an employee covered by a collective-bargaining agreement with an affected employer, shall be determined as provided in such agreement and shall be deemed to refer to company seniority, if the agreement provides for such seniority and, otherwise, to plant seniority;

(16) "continuous service" with respect to employees not having seniority under a collective-bargaining agreement with an affected employer or an industry employer shall mean a period of time measured in months equal to the sum of all hours during which the employee performed work for said employer plus all hours for which the employee received pay for time not worked divided by one hundred and seventy-three;

(17) "performed work" shall include any time during which an employee worked for an affected employer or with respect to which an employee received pay from such an employer for time not worked, and shall also include any time during which an employee would have been at work for such an employer if not for service in the armed forces, for a leave (approved by the employer) for work with an employee organization, or for a disability for which said employee received workers' compensation, disability compensation benefits provided under California law, or social security disabilty pension benefits: *Provided,* That contract employees shall be deemed to have performed during the period of such service or disability only if—

(A) the employee worked within or directly related to the expansion area immediately prior to the occurrence of such service or disability and

(B) the employee returned or sought to return to work for an affected contract employer immediately after the end of the service or disability if that was prior to the date of enactment.

The term "work performed", when used in relation to a period of time, shall also be deemed to include any period during which an employee is deemed to have performed work;

(18) "terminal pay" means the payments to employees provided for in sections 207, 208, and 209 which, regardless of the designations used herein to distinguish among them are intended and shall be deemed to be severance pay and, as such, shall be treated for Federal income tax and State unemployment insurance purposes in the same manner as is provided by California State law;

(19) Notwithstanding any other provision of this Act, the Secretary shall reduce the amount of terminal pay for an employee, as calculated pursuant to section 207, 208, or 209, by the amount of the Federal and State income taxes which would be required to be withheld by an employer from wages equal to such terminal pay if paid to any employee with the same number of income tax exemptions as the recipient. For purposes of determining the amounts of such reductions with respect to severance payments made pursuant to sections 208 and 209, said severance payments shall be prorated over the number of weeks the equivalent sums would have been paid if the employees were eligible for and claiming the weekly layoff benefits provided in section 207. The Secretary shall withhold social security contributions from terminal pay in the same amounts as would be withheld if such pay (before the reductions provided for in this subsection) were wages and the Secretary shall make contributions on behalf of employees receiving terminal pay to the trust funds created under section 201 of the Social Security Act equal to the contributions required to be made by an employer paying wages equal to such unreduced terminal pay; and

(20) "Sixty-fifth birthday" means the last day of the month in which the sixty-fifth birthday occurs.

SEC. 202. [None assigned.] The Secretary is authorized to develop the necessary procedures to implement this title.

AFFECTED EMPLOYEES

SEC. 203. [None assigned.] The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977, and ending September 30, 1980, other than for a cause that would disqualify an employee for unemployment compensation, except as provided in section 205, is conclusively presumed to be attributable to the expansion of Redwood National Park: *Provided,* That the Secretary may, for good cause, extend this period for any group of covered employees by no more than one year at a time after September 30, 1980. Any covered employee laid off during that period by an affected employer shall be considered an affected employee at any time said employee is on such layoff within the period ending September 30, 1984, or, if earlier, the end of said employee's period of protection as defined herein: *Provided, however,* That the number of affected employees with respect to an affected contract employer shall be limited in any week to that number of such employees otherwise affected as provided herein that is equal to the percentage of the affected employer's employee hours during calendar year 1977 that were worked within or directly related to the expansion area.

SEC. 204. [None assigned.] (a) The Secretary shall provide, to the maximum extent feasible, for retention and accrual of all rights and benefits which affected employees would have had in an employment with affected employers during the period in which they are affected employees. The Secretary is authorized and shall seek to enter into such agreements as he may deem to be appropriate with affected employees and employers, labor organizations representing covered employees, and trustees of applicable pension and welfare funds, or to take such other actions as he deems appropriate to provide for affected employees (including the benefits provided for in section 207(d)) the following rights and benefits:

(1) retention and accrual of seniority rights, including recall rights (or, in the case of employees not covered by collective-bargaining agreements, application of the same preferences and privileges based upon length of continuous service as are applied under the affected employer's usual practices) under conditions no more burdensome to said employees than to those actively employed; and

(2) continuing entitlement to health and welfare benefits and accrual of pension rights and credits based upon length of employment and/or amounts of earnings to the same extent as and at no greater cost to said employees than would have been applicable had they been actively employed.

(b) The Secretary shall provide, additionally, for continuing entitlement to health and welfare benefits (other than group life and additional death, dismemberment, and loss of sight benefits) for employees who—

(1) retired from employment with an affected employer for reasons other than disability on or after May 31, 1977, but not later than September 30. 1984;

(2) are receiving pension benefits under a plan financed by industry employers:

(3) were age sixty-two or older but less than age sixty-five at the time of retirement; and

(4) are not eligible for benefits under title XVIII of the Social Security Act.

(c) The agreements described in subsection (a) of this section shall provide for the Secretary, effective October 1, 1977, to make payments on behalf of eligible affected employees including employees eligible for the benefits provided for in section 207(d) to the applicable pension and welfare trust funds and to insurance companies. Such payments may be made in the form of grants and/or contributions equivalent to the difference between the amounts payable by their affected employers and labor organizations pursuant to collective-bargaining agreements (or, in the absence of such agreements, pursuant to established practice) and the amounts that would have been paid by their affected employers and their labor organizations had said employees worked or received pay for the periods for which they receive layoff benefits: *Provided,* That no payment shall be made to a pension fund on behalf of an employee who is receiving a pension from such fund. For purposes of determining the amounts of contributions calculated on the basis of worked or compensable hours, layoff and vacation replacement benefits shall be converted into the hours they represent in accordance with regulations to be issued by the Secretary.

(d) No person shall be subject to liability under the Employee Retirement Income Security Act of 1974, section 302 of the Labor-Management Relations Act, 1947, or any other law, solely by reason of the receipt of payments from the Secretary or the payment of benefits to affected employees in accordance with this section. Receipt of such payments and the payment of such benefits are deemed to be consistent with any relevant plan documents. No action taken pursuant to this section shall be deemed to place the Secretary in the position of an employer or a party in interest (including a fiduciary) for purposes of the Employee Retirement Income Security Act of 1974.

SEC. 205. [None assigned.] (a) An application for unemployment compensation filed by a covered employee on or after the first Monday following the date of enactment shall be deemed an application for the benefits provided by this Act.

(b) An affected employee shall be eligible (unless said employee has received a social security retirement or disability benefit or a pension under a plan contributed to by an affected employer) for layoff and vacation replacement benefits, as defined herein, effective the first Monday following the date of enactment, for each week of total or partial layoff if, with respect to said week, said employee—

(1) is registered with the United States Employment and Training Service in Humboldt or Del Norte Counties or one of the adjacent counties in the State of California or at such other location as the Secretary may designate;

(2) is eligible for unemployment compensation benefits under the California Unemployment Insurance Code: *Provided*, That the Secretary is authorized and directed to provide for the payment of benefits under this title to an affected employee who is held ineligible or is disqualified for benefits under said code solely because of one or more of the following reasons: insufficient base period earnings; exhaustion of benefit rights; earnings in excess of the amount which would entitle the employee to a partial benefit for the week; the waiting week requirement; unavailability for work because of jury duty, National Guard duty, retraining authorized, financed or approved by a public agency, or because of a similar reason as determined by the Secretary; refusal of work which is not "suitable work" as defined in section 201(14); receipt of a worker's compensation or other benefit for partial disability which the employee would be entitled to receive while working; and any other cause of ineligibility with respect to which the Secretary determines that, under the circumstances, it would be unreasonable or otherwise contrary to the purpose of this Act to deny said employee a benefit provided for herein; and

(3) the employee's period of protection has not been exhausted or otherwise ended by acceptance of a severance payment.

SEC. 206. [None assigned.] (a) The period of protection for an affected employee shall start with the beginning of the first week for which said employee is eligible to receive a layoff or vacation replacement benefit as provided by this title, and shall continue until the earliest of (i) the date said employee accepts a severance payment provided for below, (ii) a period equal to the length of the employee's creditable service is exhausted, or (iii) said employee's sixty-fifth birthday. In no event shall such period extend beyond September 30, 1984, except as provided by subsection (d) of section 207.

(b) Creditable service shall be computed as follows:

(1) a period equal to the length of an employee's seniority (or continuous service as defined herein) with said employee's last affected employer as of the date said employee's period of protection begins; plus

(2) a period equal to the sum of all prior periods during which the employee had seniority (or continuous service) with the same affected employer and with other industry employers: *Provided*, That if such seniority was broken (or such continuous service was interrupted) for more than three consecutive years for any reason other than employment with other affected or industry employers, periods of service in the Armed Forces or disabilities for which said employee received any workers' compensation benefits, unemployment compensation disability benefits, or disability benefits under the Social Security Act, any periods of seniority (or continuous service) prior to the break in seniority (or interruption in continuous service) shall be disregarded.

(c) If necessary, in order to establish an employee's creditable service, the Secretary shall request authorization to examine said employee's social security wage record and shall compute such service from it by a method to be prescribed by regulation.

SEC. 207. [None assigned.] (a) Except as further provided in this section, the amount of an eligible employee's weekly layoff benefit shall be equal to (1) the annual average of all hours of work performed by said employee for the last affected employer or whom the employee worked prior to the date of enactment of this section during those three of the five calendar years immediately preceding said date during which such hours were greatest, counting hours paid for at time and a half and double time as one and one-half and two hours, respectively, multiplied by (2) the wage rate applicable, during the week for which the benefit is payable, to the highest paid job held by said employee, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section, and divided by (3) fifty-two.

(b) The weekly benefit amount for an eligible employee with less than five calendar years of employment with one affected employer immediately prior to the enactment date shall be equal to the lessor[1] of—

(1) the average benefit that would be payable with respect to the same week to those covered employees (if they were eligible in the same week) who had five or more calendar years of employment with the same affected employer (in accord with subsection (a) of this section) whose benefit amounts are computed on the basis of the wage rate for a job the same as, or most similar to, the highest paid job said employee had held, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section, or

---

[1] As in original. Probably should be "lesser".

(2) an amount calculated by substituting in clause (1) of subsection (a) the annual average of all hours of work performed by said employee for said employer during those calendar years for which said employee had performed work and throughout which he had seniority (or continuous service).

(c) Notwithstanding subsections (a) and (b), the Secretary shall classify as a "seasonal employee" any affected employee whose highest paid job held, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section was in an occupation in which the average annual number of weeks during which work was actually performed by all covered employees employed in said occupatoin during the five calendar years preceding the enactment date was forty or less. With respect to such seasonal employees—

(1) the calculation of benefit amount set forth in subsection (a) shall be modified by—

(A) deducting from the hours for which said employee received pay those hours representing vacation pay and vacation pay increments and;

(B) substituting for the fifty-two provided in clause (3) of subsection (a) a divisor equal to the average annual number of weeks for which said employee performed work for an affected employer in said occupation during those three of the five calendar years immediately preceding the date of enactment during which the number of such weeks was greatest: *Provided*, That this calculation shall be modified in accord with subsection (b) with respect to those employees who had less than five calendar years of employment with one affected employer immediately prior to the date of enactment of this section.

(2) the number of weekly benefits payable in any calendar year shall not exceed the annual average number of weeks for which a seasonal employee received pay from an affected employer for work performed in the employee's occupation, as established by paragraph (1)(B), and shall be payable only during those weeks of each year determined by the Secretary to be the usual season for that occupation;

(3) vacation pay and vacation pay increments shall be paid in the same amounts and at the same times of each year as they would have been paid had said employee performed work during all of the time for which said employee receives layoff benefits. Such pay is referred to herein as "vacation replacement benefits".

(d) Notwithstanding any other provision of this Act, the benefits for any affected employee who will reach the age of sixty on or before September 30, 1984, shall be extended after the end of the employee's period of protection (unless severance pay has been accepted) until the employee's sixty-fifth birthday, and shall be equal to said employee's weekly layoff benefit.

(e) The benefit amount provided by this section for any week of total or partial layoff shall be reduced by—

(1) the full amount of any earnings, including pay for time not worked with respect to the same week, from employment obtained pursuant to section 103, or employment by employers engaged in timber harvesting, or in related sawmill, plywood, and other wood processing operations;

(2) 50 per centum of earnings and pay for time not worked from any other employer with respect to that week; and

(3) the full amount of any unemployment compensation attributable to that week.

SEC. 208. [None assigned.] (a) An affected employee (other than a short-service employee described in subsection (a) of section 209) shall be paid severance pay in accordance with this section if said employee:

(1) has been on a continuous layoff from employment with the employee's last affected employer for a period of at least twenty weeks subsequent to December 31, 1977;

(2) has no definite recall date for work with the affected employer by whom the employee was laid off and no offer of suitable work by any affected employer; and

(3) applies for severance pay during a week with respect to which said employee has not performed work for an affected employer: *Provided*, That this clause shall not result in denial of severance pay to an otherwise eligible employee who at the time of application is totally and permanently disabled as defined in the Social Security Act[2]; or

(4) was permanently separated from employment with an affected employer during the period beginning May 31, 1977, and ending on the date of enactment of this Act, as a result of the closure of the mill or plant in which said employee was

---

[2] See Social Security Act §§216(i)(1) and 223(d) for the definition of "disability" under that Act. "Totally and permanently disabled" is not specifically defined in the Social Security Act.

employed and has not, since said separation, been employed by an affected employer.

Provided, That an employee shall be deemed an affected employee for purposes of this section if said employee meets the requirements of clauses (1), (2), and (3) of section 204(b).

(b) The amount of severance pay payable to an employee shall be computed by multiplying the applicable number of weeks determined in accordance with subsection (c) by the amount of the weekly layoff benefit (without reduction for earnings or other benefits) which is payable, or would be payable if the employee were eligible, for the week in which the application was filed: *Provided,* That for a seasonal employee the amount so calculated, plus the amount of vacation replacement benefits applicable for that year shall be multiplied by the number of weeks in said employee's usual season, as determined in section 207(c), and the result divided by fifty-two.

(c) The number of weeks of severance pay shall be equal to one week for each month of the employee's creditable service up to a maximum of seventy-two weeks: *Provided,* That the severance payment to any employee shall not exceed the total amount of the weekly layoff and vacation replacement benefits which would have been payable if said employee were to be eligible for such benefits continuously from the week of application until the end of the applicable period of protection (or, in the case of an employee described in the final proviso of subsection (a), until the earlier of said employee's sixty-fifth birthday or September 30, 1984), calculated on the basis of the weekly amounts of such benefits as of the date of application for severance pay.

(d) Acceptance of severance pay terminates the affected employee's period of protection and makes said employee ineligible thereafter for all other forms of terminal pay and for the protections provided in section 204, except as otherwise specifically provided in this Act.

(e) Before making a severance payment to an employee, the Secretary shall obtain said employee's written agreement that, upon resumption of employment in the industry within Humboldt and Del Norte Counties and the counties adjacent thereto in the State of California prior to September 30, 1980, or such later date established by the Secretary with respect to said employee pursuant to section 203, said employee will return it in weekly installments equal to a specified percentage of the employee's earnings in the industry, which the Secretary shall set at a reasonable level. The agreement shall include authorization for the Secretary to arrange with an employer for withholding of the applicable amounts from the employee's pay.

SHORT-SERVICE EMPLOYEES

SEC. 209. [None assigned] (a) Notwithstanding any other provision of this Act, an affected employee as defined in this title shall be ineligible for any benefit under this title except as provided in this section if:

(1) said employee will not reach age sixty before October 1, 1984; and

(2) said employee as of the date of becoming an affected employee, does not have service credit for pension purposes of at least five full years under a pension plan contributed to by industry employers.

(b) An affected employee described in subsection (a) shall be paid severance pay in accordance with this section if said employee meets the requirements of section 208(a).

(c) Said employee shall be paid a severance payment equal to forty times the hourly wage rate applicable at the time of application for severance pay to the highest paid job held by said employee, other than by temporary assignment, during calendar year 1977, with the employee's last affected employer for each one hundred and seventy-three hours for which said employee performed work for affected employers.

(d) Subsection (d) of section 208 shall be applicable to employees applying for and accepting severance payments pursuant to this section except that such employees shall remain eligible for allowances provided for in sections 211 and 212, and for retraining as provided for in section 210(a) and while in good faith engaged in such training shall be paid the same stipends and allowances as are generally applicable to individuals engaged in such retraining programs who are not employees as defined in this Act.

* * * * * * *

ADMINISTRATION

SEC. 213. [None assigned] (a) The Secretary shall be responsible for paying promptly all benefits and payments provided by this title.

(b) Effective October 1, 1977, there are authorized to be appropriated annually such sums as may be required to meet the obligations provided for in this title.

(c) The Secretary shall have the authority to obtain information necessary to carry out the responsibilities created under this Act in the same manner as provided by section 249 of the Trade Act of 1974 (19 U.S.C. 2321).

(d) The Secretary shall offer all reasonable cooperation and assistance to individuals who believe they may qualify for the benefits, payments, preferential hiring rights, and other protections provided for employees under this Act. Among other things, the Secretary shall—

(1) provide all covered employees with literature stating their rights and obligations in nontechnical terms; and

(2) develop and implement procedures for the filing (including filing by mail in appropriate circumstances as determined by the Secretary) of applications, appeals, and complaints relating to the rights and entitlements established for employees by this title designed to facilitate prompt determinations and prompt payment to eligible applicants.

(e) The Secretary shall direct that notices, reports, applications, appeals, and information concerning the implementation of this title required to be filed with the Secretary shall be filed at the offices of the United States Employment and Training Service in Humboldt and Del Norte Counties of the State of California and that information required to facilitate employees' exercise of their rights under this title shall be kept available at such offices unless the Secretary shall designate additionally.

(f) In all cases where two or more constructions of the language of this title would be reasonable, the Secretary shall adopt and apply that construction which is most favorable to employees. The Secretary shall avoid inequities adverse to employees that otherwise would arise from an unduly literal interpretation of the language of this title.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act §201 and title XVIII have footnotes referring to P.L. 95-250.]

P.L. 95-433, Approved October 10, 1978 (92 Stat. 1047)

[Indian Claims Commission—Confederated Tribes and Bands of the Yakima Indian Nation]

* * * * * * *

That [25 U.S.C. 609(c)] (a) for purposes of this Act, the term—

(1) "tribe" means the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation;

(2) "tribal governing body" means the governing body of a tribe or a committee of the members of such body designated by such body for purposes of this Act;

(3) "Secretary" means the Secretary of the Interior acting through (unless otherwise determined by the Secretary) the Superintendent of the Bureau of Indian Affairs Agency serving the tribe involved;

(4) "minor" means a member of a tribe, or descendant of a member of a tribe, who has not attained the age of eighteen years and who has a minor's share;

(5) "minor's share" means the per capita share of a judgment award, and the investment income accruing thereto, which is held in trust by the Secretary for a minor; and

(6) "parent" means the biological or adoptive parent or parents, or other legal guardian, of a minor.

(b) Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466), the Act of March 12, 1968 (82 Stat. 47), or any other law, or any regulation or plan promulgated pursuant thereto, the minor's share of judgment funds heretofore or hereafter awarded by the Indian Claims Commission or the United States Court of Claims to a tribe may be disbursed to a parent of such minor pursuant to this Act.

(c) The minor's share of judgment funds may be disbursed in such amounts deemed necessary by such parent for the best interest of the minor for the minor's health, education, welfare, and emergencies under a plan governing such funds for each minor (or a plan governing funds of all minors in a family) approved by the Secretary and the tribal governing body of the minor's tribe.

(d) The Secretary shall provide a monthly report to each tribal governing body which has approved one or more plans pursuant to subsection (c). Each such report shall include the amount and purpose of every disbursement made during each month under such plans.

SEC. 2. [25 U.S.C. 609c-1] Any part of any of the judgment funds referred to in the first section of this Act that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 95-433.]

P.L. 95-498, Approved October 21, 1978 (92 Stat. 1672)
[Pueblo of Santa Ana Indians, New Mexico]

* * * * * * *

SEC. 5. [None assigned.] (a) Any and all gross receipts derived from, or which relate to, the property declared to be held in trust by this Act which were received by the United States subsequent to the acquisition by the United States of such property and prior to the date of the enactment of this Act (including State school lands referred to in section 7), from whatever source and for whatever purpose, shall, as of the date of enactment of this Act, be deposited to the credit of the Pueblo of Santa Ana and may be expended by such tribe for such beneficial programs as the tribal governing body may determine.

(b) All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease referred to in section 4(a) of this Act, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Santa Ana pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1000(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 95-498.]

P.L. 95-499, Approved October 21, 1978 (92 Stat. 1679)
[Pueblo of Zia, New Mexico Indians]

[None assigned.] That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia:

* * * * * * *

SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Zia pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 95-499.]

P.L. 95-557, Approved October 31, 1978 (92 Stat. 2080)

Housing and Community Development Amendments of 1978

* * * * * * *

TITLE IV—CONGREGATE SERVICES

SHORT TITLE

SEC. 401. [42 U.S.C. 8001 note] This title may be cited as the "Congregate Housing Services Act of 1978".

* * * * * * *

MISCELLANEOUS PROVISIONS

SEC. 410. [42 U.S.C. 8009]

* * * * * * *

(b) No service provided to a public housing resident or to a resident of a housing project assisted under section 202 of the Housing Act of 1959[1] under this title, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving services assisted under this title shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

* * * * * * *

[*Internal References.*—Social Security Act §§2(a)(10)(A), 402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(a)(2)(A) and 1612(b) have footnotes referring to P.L. 95-557.]

P.L. 95-588, Approved November 4, 1978 (92 Stat. 2497)

Veterans' and Survivors' Pension Improvement Act of 1978

* * * * * * *

SAVINGS PROVISIONS FOR PERSONS ENTITLED TO PENSION AS OF DECEMBER 31, 1978

SEC. 306. [38 U.S.C. 521 note] (a)(1)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, may elect to receive pension under such section as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(2) Any person eligible to make an election under paragraph (1) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 521, 541, or 542, as appropriate, of title 38, United States Code, as in effect on December 31, 1978, except that—

---

[1] See P.L. 86-372, §202, in Vol. II, p. 412.

(A) pension may not be paid to such person if such person's annual income (determined in accordance with section 503 of title 38, United States Code, as in effect on December 31, 1978) exceeds $4,038, in the case of a veteran or surviving spouse without dependents, $5,430, in the case of a veteran or surviving spouse with one or more dependents, or $3,299, in the case of a child; and

(B) the amount prescribed in subsection (f)(1) of section 521 of such title (as in effect on December 31, 1978) shall be $1,285;

as each such amount is increased from time to time under paragraph (3).

(3) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall, effective on the date of such increase under such section 3112, increase—

(A) the annual income limitations in effect under paragraph (2); and

(B) the amount of income of a veteran's spouse excluded from the annual income of such veteran under section 521(f)(1) of such title, as in effect on December 31, 1978;

by the same percentage as the percentage by which such maximum annual rates under such sections 521, 541, and 542 are increased.

(b)(1) Effective January 1, 1979, section 9 of the Veterans' Pension Act of 1959 (Public Law 86-211) is repealed.

(2)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 9(b) of the Veterans' Pension Act of 1959 may elect to receive pension under section 521, 541, or 542 of title 38, United States Code, as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator of Veterans' Affairs may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(3) Any person eligible to make an election under paragraph (2) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 9(b) of the Veterans' Pension Act of 1959, as in effect on December 31, 1978, except that pension may not be paid to such person if such person's annual income (determined in accordance with the applicable provision of law, as in effect on December 31, 1978) exceeds $3,534, in the case of a veteran or surviving spouse without dependents or in the case of a child, or $5,098, in the case of a veteran or surviving spouse with one or more dependents, as each such amount is increased from time to time under paragraph (4).

(4) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator shall, effective on the date of such increase under such section 3112, increase the annual income limitations in effect under paragraph (3) by the same percentage as the percentage by which the maximum annual rates under such sections 521, 542, and 543 are increased.

(c) Any case in which—

(1) a claim for pension is pending in the Veterans' Administration on December 31, 1978;

(2) a claim for pension is filed by a veteran after December 31, 1978, and within one year after the date on which such veteran became totally and permanently disabled, if such veteran became totally and permanently disabled before January 1, 1979; or

(3) a claim for pension is filed by a surviving spouse or by a child after December 31, 1978, and within one year after the date of death of the veteran through whose relationship such claim is made, if the death of such veteran occurred before January 1, 1979;

shall be adjudicated under title 38, United States Code, as in effect on December 31, 1978. Any benefits determined to be payable as the result of the adjudication of such a claim shall be subject to the provisions of subsection (a).

(d) In any case in which any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959, elects (in accordance with subsection (a)(1) or (b)(2), as appropriate) before October 1, 1979, to receive pension under such section as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall pay to such person an amount equal to the amount by which the amount of pension benefits such person would have received had such election been made on January 1, 1979, exceeds the amount of pension benefits actually paid to such person for the period beginning on January 1, 1979, and ending on the date preceding the date of such election.

(e) Whenever there is an increase under subsections (a)(3) and (b)(4) in the annual income limitations with respect to persons being paid pension under subsections (a)(2) and (b)(3), the Administrator of Veterans' Affairs shall publish such annual income limitations, as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act is published by reason of a determination under section 215(i) of such Act.

* * * * * * *

[*Internal References.*—Social Security Act §1133(a)(1) and P.L. 96-272 §310(b), (Vol. II, p. 635) cite §306 of the Veterans' and Survivors' Pension Improvement Act of 1978.]

P.L. 95-600, Approved November 6, 1978 (92 Stat. 2763)
Revenue Act of 1978

* * * * * * *

CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF THE EMPLOYMENT TAXES

SEC. 530. [26 U.S.C. 3401 note] (a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(1) IN GENERAL.—If—

(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

(3) CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

(4) REFUND OR CREDIT OF OVERPAYMENT.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

(b) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

(c) DEFINITIONS.—For purposes of this section—

(1) EMPLOYMENT TAX.—The term "employment tax" means any tax imposed by subtitle C of the Internal Revenue Code of 1954.

(2) EMPLOYMENT STATUS.—The term "employment status" means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not any employee).

(d) Exception.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.[1]

* * * * * * *

[*Internal Reference*.—P.L. 83-591, §3121(d) (Vol. I, p. 882) has a footnote referring to P.L. 95-600.]

P.L. 95-608, Approved November 8, 1978 (92 Stat. 3069)

Indian Child Welfare Act of 1978

* * * * * * *

Sec. 2. [25 U.S.C. 1901] Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

Sec. 3. [25 U.S.C. 1902] The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Sec. 4. [25 U.S.C. 1903] For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

---

[1] P.L. 99-514, §1706(a), added subsection (d), applicable to remuneration paid and services rendered after December 31, 1986.

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. [25 U.S.C. 1911] (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided,* That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102. [25 U.S.C. 1912] (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. [25 U.S.C. 1913] (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. [25 U.S.C. 1914] Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. [25 U.S.C. 1915] (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided,* That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. [25 U.S.C. 1916] (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. [25 U.S.C. 1917] Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. [25 U.S.C. 1918] (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jursidiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. [25 U.S.C. 1919] (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. [25 U.S.C. 1920] Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. [25 U.S.C. 1921] In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standards.

SEC. 112. [25 U.S.C. 1922] Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. [25 U.S.C. 1923] None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. [25 U.S.C. 1931] (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. [25 U.S.C. 1932] The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. [25 U.S.C. 1933] (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. [25 U.S.C. 1934] For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. [25 U.S.C. 1951] (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. [25 U.S.C. 1952] Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

TITLE IV—MISCELLANEOUS

SEC. 401. [25 U.S.C. 1961] (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

SEC. 402. [25 U.S.C. 1962] Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

SEC. 403. [25 U.S.C. 1963] If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles II and IV, Part B (at §420) and §405 and §§402(a)(16) and (a)(20) and 1631(a)(2) have footnotes referring to P.L. 95-608.]

P.L. 95-630, Approved November 10, 1978 (92 Stat. 3641)

Financial Institutions Regulatory and Interest Rate Control Act of 1978

* * * * * * *

TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. [12 U.S.C. 3401 note] This title may be cited as the "Right to Financial Privacy Act of 1978".

DEFINITIONS

SEC. 1101. [12 U.S.C. 3401] For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United

States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "supervisory agency" means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—

(A) the Federal Deposit Insurance Corporation;

(B) the Federal Savings and Loan Insurance Corporation;

(C) the Federal Home Loan Bank Board;

(D) the National Credit Union Administration;

(E) the Board of Governors of the Federal Reserve System;

(F) the Comptroller of the Currency;

(G) the Securities and Exchange Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II); or

(I) any State banking or securities department or agency; and

(7) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

CONFIDENTIALITY OF RECORDS—GOVERNMENT AUTHORITIES

SEC. 1102. [12 U.S.C. 3402] Except as provided by section 1103(c) or (d), 1113, or 1114, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 1104;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 1105;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 1106;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 1107; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 1108.

CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

SEC. 1103. [12 U.S.C. 3403] (a) No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this title.

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this title.

(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity.[1] Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary.[2] Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the

---

[1] P.L. 99-570, §1353(a), added this sentence.

[2] See footnote 1.

United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.[3]

(d)(1) Nothing in this title shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this title shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

CUSTOMER AUTHORIZATIONS

SEC. 1104. [12 U.S.C. 3404] (a) A customer may authorize disclosure under section 1102(1) if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 1109, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

ADMINISTRATIVE SUBPENA AND SUMMONS

SEC. 1105. [12 U.S.C. 3405] A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

---

[3] See footnote 1.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

SEARCH WARRANTS

SEC. 1106. [12 U.S.C. 3406] (a) A Government authority may obtain financial records under section 1102(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978.".

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 1109(a). If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978.".

JUDICIAL SUBPENA

SEC. 1107. [12 U.S.C. 3407] A Government authority may obtain financial records under section 1102(4) pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

FORMAL WRITTEN REQUEST

Sec. 1108. [12 U.S.C. 3408] A Government authority may request financial records under section 1102(5) pursuant to a formal written request only if—

(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

DELAYED NOTICE—PRESERVATION OF RECORDS

Sec. 1109. [12 U.S.C. 3409] (a) Upon application of the Government authority, the customer notice required under section 1104(c), 1105(2), 1106(c), 1107(2), 1108(4), or 1112(b) may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding[4] subparagraphs.

An application for delay must be made with reasonable specificity.

(b)(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a), it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (title II, Public Law 95-223), or section 5 of the United Nations Participation Act (22 U.S.C. 287c), and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specifiy that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason) . The purpose of the investigation or official proceeding was .".

(c) When access to financial records is obtained pursuant to section 1114(b) (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b), as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).".

(d) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court make the findings required in subsection (a).

CUSTOMER CHALLENGE PROVISIONS

SEC. 1110. [12 U.S.C. 3410] (a) Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating the the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that has not been substantial compliance with the provisions of this title.

---

[4] As in original. Should be "preceding".

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this title. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this title, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).

(e) The challenge procedures of this title constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this title.

(f) Nothing in this title shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this title shall entitle a customer to assert the rights of a financial institution.

DUTY OF FINANCIAL INSTITUTIONS

SEC. 1111. [12 U.S.C 3411] Upon receipt of a request for financial records made by a Government authority under section 1105 or 1107, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 1103(b).

USE OF INFORMATION

SEC. 1112. [12 U.S.C. 3412] (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of   have been furnished to   pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109(a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109(a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109(a) and (b) shall serve to the customer the notice specified in section 1109(b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Notwithstanding section 1101(6) or any other provision of this title, the exchange of financial records or other information with respect to a financial institution among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council is permitted.

EXCEPTIONS

SEC. 1113. [12 U.S.C. 3413] (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Nothing in this title prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h)(1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)[5].

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of the Internal Revenue Code of 1954, title II of the Social Security Act, or the Railroad Retirement Act of 1974.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be barred from redisclosure by the financial institution or its agents.[6]

SPECIAL PROCEDURES

SEC. 1114. [12 U.S.C. 3414] (a)(1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

---

[5] P.L. 99-570, §1353(b), added ", except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

[6] P.L. 98-21, §121(c)(3)(C), added subsection (k).

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.[7]

(b)(1) Nothing in this title shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;
(B) serious property damage; or
(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109(c).

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

COST REIMBURSEMENT

SEC. 1115. (a) [12 U.S.C. 3415] Except for records obtained pursuant to section 1103(d) or 1113(a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) [12 U.S.C. 3415 note] This section shall take effect on October 1, 1979.

JURISDICTION

SEC. 1116. [12 U.S.C. 3416] An action to enforce any provision of this title may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

---

[7] P.L. 99-569, §404, added paragraph (5).

CIVIL PENALTIES

SEC. 1117. [12 U.S.C. 3417] (a) Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Whenever the court determines that any agency or department of the United States has violated any provision of this title and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this title in good-faith reliance upon a certificate by any Government authority shall not be liable to the customer for such disclosure.

(d) The remedies and sanctions described in this title shall be the only authorized judicial remedies and sanction for violations of this title.

INJUNCTIVE RELIEF

SEC. 1118. [12 U.S.C. 3418] In addition to any other remedy contained in this title, injunctive relief shall be available to require that the procedures of this title are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

SUSPENSION OF STATUTES OF LIMITATIONS

SEC. 1119. [12 U.S.C. 2419] If any individual files a motion or application under this title which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

GRAND JURY INFORMATION

SEC. 1120. [12 U.S.C. 3420] Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury;

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

REPORTING REQUIREMENTS

SEC. 1121. [12 U.S.C. 3421] (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 1109 and the number of customer challenges made pursuant to section 1110 during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 1109(a)(3); the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 1104, 1105, 1106, 1107, 1108, 1109, or 1114 shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act §§205, 1631(e) and (f), and title IV, Part D (at §451) have footnotes referring to P.L. 95-630.]

P.L. 96-88 Approved October 17, 1979 (93 Stat. 668)
Department of Education Organization Act

* * * * * * *

REDESIGNATION

SEC. 509. [20 U.S.C. 3508] (a) The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare is hereby redesignated the Secretary or official, as appropriate, of Health and Human Services.

(b) Any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any other official of the Department of Health, Education, and Welfare in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of this Act[1] shall be deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary or the Department under this Act.

[*Internal Reference.*—There is a reference to this public law in the Preface.]

P.L. 96-223, Approved April 2, 1980 (94 Stat. 229)
Crude Oil Windfall Profit Tax Act of 1980

* * * * * * *

Title I—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

* * * * * * *

ALLOCATION OF NET REVENUES FROM WINDFALL PROFIT TAX TO CERTAIN USES

SEC. 102. [26 U.S.C. 4986 note] (a) SEPARATE ACCOUNT IN TREASURY ESTABLISHED.—The net revenues from the windfall profit tax for each fiscal year beginning after September 30, 1980, and before October 1, 1990, are hereby allocated for accounting purposes to a separate account in the Treasury to be known as the Windfall Profit Tax Account (hereinafter in this section referred to as the "Account").

(b) SPECIFIED USES FOR AMOUNTS IN THE ACCOUNT.—

---

[1] The President made this Act effective on May 4, 1980.

(1) BASIC NET REVENUES.—In the case of the amount of basic net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	60
Low-income assistance	25
Energy and transportation programs	15

(2) ADDITIONAL NET REVENUES.—In the case of the amount of additional net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	66⅔
Low-income assistance	33⅓

(3) SPECIAL RULE FOR LOW-INCOME ASSISTANCE FOR 1982 AND SUBSEQUENT YEARS.—In the case of any amount allocated under paragraph (1) to the subaccount for low-income assistance for the fiscal year beginning October 1, 1981, or any subsequent fiscal year—

(A) 50 percent shall be allocated to a program to assist AFDC and SSI recipients under the Social Security Act, and

(B) 50 percent shall be allocated to a program of emergency energy assistance.

(c) NET REVENUES DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "net revenues of the windfall profit tax" means, for any fiscal year, the amount which the Secretary estimates to be the excess of—

(A) the gross revenues from the tax imposed by section 4986 for the fiscal year, over

(B) the sum of —

(i) the refunds of and other adjustments to such tax for such fiscal year, plus

(ii) the decrease in the income taxes imposed by chapter 1 resulting from the tax imposed by section 4986.

For purposes of subparagraph (A), there shall not be taken into account any revenue attributable to an economic interest in crude oil held by the United States.

(2) BASIC NET REVENUES.—The term "basic net revenues" means the estimated net revenues which would result for any period under the assumptions for such period which were made in enacting the Crude Oil Windfall Profit Tax Act of 1980.

(3) ADDITIONAL NET REVENUES.—The term "additional net revenues" means for any period the net revenues in excess of the basic net revenues for such period.

(d) PRESIDENT TO PROPOSE ALLOCATION OF NET REVENUES.—

(1) IN GENERAL.—The President shall propose for each fiscal year to which this section applies an allocation of the net revenues among the uses set forth in subsection (b).

(2) TIME AND MANNER FOR PROPOSING.—Except for the fiscal year beginning October 1, 1980, the proposal for each fiscal year shall be contained in the annual budget for such fiscal year. The proposal for the fiscal year beginning October 1, 1980, shall be submitted by the President within 90 days after the date of the enactment of this Act.

(e) REPORTS.—The Secretary of the Treasury shall report to the Congress not later than January 1 of 1982 and of each calendar year thereafter before 1992—

(1) the net revenues derived from the windfall profit tax for the fiscal year ending on September 30 of the preceding year, and

(2) the actual disposition for such fiscal year of such revenues among the uses specified in subsection (b).

* * * * * * *

[*Internal References.*—The catchlines to the Social Security Act title IV, Part A (at §401) and title XVI have footnotes referring to P.L. 96-223.]

P.L. 96-265, Approved June 9, 1980 (94 Stat. 441)
Social Security Disability Amendments of 1980

SEC. 1. [42 U.S.C. 1305 note] This Act may be cited as the "Social Security Disability Amendments of 1980".

* * * * * * *

SEC. 201. * * *

(e) [42 U.S.C. 1382h note] The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act.

* * * * * * *

AUTHORITY FOR DEMONSTRATION PROJECTS

SEC. 505. (a) [42 U.S.C. 1310 note] (1) The Secretary of Health and Human Services shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of (A) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled beneficiaries and (B) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, earlier referral of beneficiaries for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation), to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally.

(3) In the case of any experiment or demonstration project under paragraph (1) which is initiated before June 10, 1990[1], the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

(4) On or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.[2]

* * * * * * *

(c) [42 U.S.C. 1310 note] The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under subsection (a) no later than June 9, 1990[3].

* * * * * * *

[*Internal References.*—Social Security Act §§201(k) cites §505(a) and 215(i)(2)(D)(end) cites §101(a)(3) of the Social Security Disability Amendments of 1980. There are footnotes referring to this public law at §1616(c)(3); and catchlines for Social Security Act titles II, XVIII, and §§223, 1110, and 1619.]

---

[1] P.L. 99-272, §12101(a), inserted "which is initiated before June 10, 1990".

[2] P.L. 99-272, §12101(b), amended paragraph (4) in its entirety.

[3] P.L. 99-272, §12101(c), struck out "this section no later than five years after the date of the enactment of this Act" and substituted "subsection (a) no later than June 9, 1990".

P.L. 96-272, Approved June 17, 1980 (94 Stat. 500)
Adoption Assistance and Child Welfare Act of 1980

* * * * * * *

SEC. 101. (a) * * *

(2)(A) [42 U.S.C. 608 note] Effective with respect to expenditures made after September 30, 1980, section 408 of the Social Security Act is, subject to subparagraph (B), repealed.

(B) [42 U.S.C. 608 note] The repeal made by subparagraph (A) shall not be applicable in the case of any State for any quarter prior to the first quarter, which begins after September 30, 1980, in which such State has in effect a State plan approved under part E of the Social Security Act, or (if earlier) such repeal shall be effective with respect to expenditures made after September 30, 1982. During any period with respect to which the repeal made by subparagraph (A) is not applicable in the case of a State and during which a limitation is in effect under section 474(b)(1) of the Social Security Act, the aggregate of the sums payable to the State, under the State's plan approved under part A of title IV of such Act, with respect to expenditures (including administrative expenditures as determined by the Secretary of Health, Education, and Welfare) authorized or incurred by reason of the provisions of section 408 of such Act shall not exceed the amount of the allotment which such State would have had for such period under section 474(b) if such State had had an approved plan under part E of such title IV. Any amount which would have been available to such State from its allotment for any period with respect[1] which such repeal is not applicable in the case of a State (whether or not a limitation is in effect under section 474(b)(1) of such Act) under section 474(b) of the Social Security Act (if such State had had an approved plan under part E of title IV of such Act) which the State does not claim as reimbursement with respect to expenditures (including administrative expenditures as determined by the Secretary) authorized or incurred by reason of the provisions of section 408 of such Act, may be claimed by the State as reimbursement for expenditures in such period pursuant to part B of title IV of such Act in the same manner as amounts available to States from allotments under section 474(b) of such Act, and not claimed as reimbursement under part E of title IV of such Act, are authorized to be claimed under section 474(c) of such Act.

* * * * * * *

(4) * * *

(B) [42 U.S.C. 673a] The Secretary of Health, Education, and Welfare shall take all possible steps to encourage and assist the various States to enter into interstate compacts (which are hereby approved by the Congress) under which the interests of any adopted child with respect to whom an adoption assistance agreement has been entered into by a State under section 473 of the Social Security Act will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State.

* * * * * * *

SEC. 102.

* * * * * * *

(e) [42 U.S.C. 672 note] The Secretary of Health, Education, and Welfare, within three months after the close of each fiscal year with respect to which the amendments made by this section are in effect, shall submit to the Congress a full and complete report on the number of children placed in foster care pursuant to voluntary placement agreements under sections 408 and 472 of the Social Security Act and on the reasons for such placements together with a description of the extent to which such placements have contributed to the achievement of the objectives of this title, including such recommendations as he may deem appropriate with respect to the continuation (in such section 472) of authority to make Federal payments for dependent children voluntarily placed in foster care.

* * * * * * *

SEC. 103.

* * * * * * *

---

[1] As in original. Preposition is needed.

(d) [42 U.S.C. 622 note] Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act was not the agency designated pursuant to section 402(a)(3) of that Act, such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title, such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act.

* * * * * * *

SEC. 306.

* * * * * * *

(b) [42 U.S.C. 1320b-2 note] * * *

(2) In the case of claims filed prior to the date of enactment of this Act on account of expenditures described in section 1132 of the Social Security Act made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act.

(c) [42 U.S.C. 1320b-2 note] Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.

* * * * * * *

SEC. 310.

* * * * * * *

(b)(1) [42 U.S.C. 1396a note] (A) For purposes of section 1902(a)(10)(A) of the Social Security Act, any individual who, prior to the date of enactment of this Act and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act, or was eligible for and received supplemental security income benefits under title XVI of such Act (or a supplementary payment described in section 13(c) of Public Law 93-233), and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, not occurred.

(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an "informed election" (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

(ii) The term "informed election" means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the "Administrator") with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.

(2) [42 U.S.C. 1320b-3 note] (A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act, of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

(B) Notwithstanding any other provision of law—

(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare, and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act, and State agencies making supplemental payments pursuant to section 1616 of such Act or an agreement entered into pursuant to section 212(a) of Public Law 93-66.

[*Internal References.*—Social Security Act §422(b)(1)(A) cites §103(d) of the Adoption Assistance and Child Welfare Act of 1980 and §1921(a)(5)(F) cites §310(b)(1) of Public Law 96-272. P.L. 97-276, §136 (Vol. II, p. 678), cites §306 of Public Law 96-272. Social Security Act §471(a)(16), §474(b)(4)(C), (b)(5)(A)(i), (b)(5)(B), (b)(5)(C), and (b)(5)(D); and the catchlines for §472 and §473 have footnotes referring to P.L. 96-272.]

P.L. 96-422, Approved October 10, 1980 (94 Stat. 1799)
Refugee Education Assistance Act of 1980

* * * * * * *

TITLE V—OTHER PROVISIONS RELATING TO CUBAN AND HAITIAN ENTRANTS

AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

SEC. 501. [8 U.S.C. 1522 note] (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act. The authorizations provided in section 414 of that Act shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

(2) Any reference in chapter III of title I of the Supplemental Appropriations and Rescission Act, 1980, to section 405(c)(2) of the International Security and Development Assistance Act of 1980 or to the International Security Act of 1980 shall be construed to be a reference to paragraph (1) of this subsection.

(b) In addition, the President may, by regulation, provide that benefits granted under any law of the United States (other than the Immigration and Nationality Act) with respect to individuals admitted to the United States under section 207(c) of the Immigration and Nationality Act shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

(c)(1)(A) Any Federal agency may, under the direction of the President, provide assistance (in the form of materials, supplies, equipment, work, services, facilities, or otherwise) for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. Such assistance shall be provided on such terms and conditions as the President may determine.

(B) Funds available to carry out this subsection shall be used to reimburse State and local governments for expenses which they incur for the purposes described in subparagraph (A). Such funds may be used to reimburse Federal agencies for assistance which they provide under subparagraph (A).

(2) The President may direct the head of any Federal agency to detail personnel of that agency, on either a reimbursable or nonreimbursable basis, for temporary duty with any Federal agency directed to provide supervision and management for purposes of this subsection.

(3) The furnishing of assistance or other exercise of functions under this subsection shall not be considered a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(4) Funds to carry out this subsection may be available until expended.

(d) The authorities provided in this section are applicable to assistance and services provided with respect to Cuban or Haitian entrants at any time after their arrival in the United States, including periods prior to the enactment of this section.

(e) As used in this section, the term "Cuban and Haitian entrant" means—

(1) any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) any other national of Cuba or Haiti—

(A) who—

(i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

[*Internal Reference.*—Social Security Act §415(f)(5) cites §501(e) of the Refugee Education Assistance Act of 1980.]

P.L. 96-465, Approved October 17, 1980 (94 Stat. 2071)
Foreign Service Act of 1980

* * * * * * *

SEC. 860. [22 U.S.C. 4071i] TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1954 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.[1]

* * * * * * *

[*Internal Reference.*—Social Security Act §210(a)(5)(H) cites §860 of the Foreign Service Act of 1980.]

P.L. 96-466, Approved October 17, 1980 (94 Stat. 2171)
Veterans' Rehabilitation and Education Amendments of 1980

* * * * * * *

EMPLOYMENT ASSISTANCE AND SERVICES FOR VETERANS INELIGIBLE FOR ASSISTANCE UNDER CHAPTER 41

SEC. 512. [38 U.S.C. 2001 note] The Secretary of Labor shall assure that any veteran who is made ineligible for employment assistance under chapter 41 of title 38, United States Code, by virtue of the amendments made by section 503(1) of this Act shall be provided with the employment assistance and services made available under the provisions of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (commonly referred to as the "Wagner-Peyser Act"), (29 U.S.C. 49-49k), the Comprehensive Employment and Training Act (29 U.S.C. et seq.), and other applicable provisions of law.

REQUIREMENT FOR BUREAU OF LABOR STATISTICS TO PUBLISH CERTAIN UNEMPLOYMENT INFORMATION ANNUALLY

SEC. 513. [38 U.S.C. 2007 note] (a) When the Commissioner of the Bureau of Labor Statistics publishes annual labor-market statistics relating specifically to veterans who served in the Armed Forces during the Vietnam era, the Commissioner shall also publish separate labor-market statistics on the same subject matter which apply only to veterans who served in the Vietnam theatre of operations. When the Commissioner of the Bureau of Labor Statistics publishes labor-market statistics which relate specifically to veterans who served in the Armed Forces during the Vietnam era in addition to those statistics published on an annual basis to which the preceding sentence applies, the Commissioner shall also, if feasible, publish separate labor-market statistics on the same subject matter which apply only to veterans who served in the Vietnam theatre of operations.

(b) For the purposes of this section, veterans who during the Vietnam era served in Vietnam, in air missions over Vietnam, or in naval missions in the waters adjacent to Vietnam shall be considered to be veterans who served in the Vietnam theatre of operations.

* * * * * * *

[*Internal Reference.*—38 U.S.C. §2001 has a footnote referring to P.L. 96-466.]

---

[1] P.L. 99-335, §415, added §860.

P.L. 96-481, Approved October 21, 1980 (94 Stat. 2321)
[Small Business Export Expansion Act of 1980]

* * * * * * *

Title II—Equal Access to Justice Act

SEC. 201. [5 U.S.C. 504 note] This title may be cited as the "Equal Access to Justice Act".

FINDINGS AND PURPOSE

SEC. 202. [5 U.S.C. 504 note] (a) The Congress finds that certains individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

(c) It is the purpose of this title—

(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the "American rule" respecting the award of attorney fees.

* * * * * * *

EFFECT ON OTHER LAWS

SEC. 206. [28 U.S.C. 2412 note] (a) Except as provided in subsection (b), nothing[1] in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

(b) Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 206(b) of that Act and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.[2]

* * * * * * *

EFFECTIVE DATE AND APPLICATION

SEC. 208. [5 U.S.C. 504 note] This title and the amendments made by this title shall take effect of[3] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action.[4]

[*Internal Reference.*—Social Security Act §206(b) has a footnote referring to P.L. 96-481.]

---

[1] P.L. 99-80, §3(1), struck out "Nothing" and substituted "(a) Except as provided in subsection (b), nothing".
[2] P.L. 99-80, §3(2), added subsection (b).
[3] As in original. Probably should be "on".
[4] P.L. 99-80, §5, added this sentence.

P.L. 96-499, Approved December 5, 1980 (94 Stat. 2599)
Omnibus Reconciliation Act of 1980

* * * * * * *

TITLE IX—MEDICARE AND MEDICAID RELATED PROVISIONS

SHORT TITLE; TABLE OF CONTENTS OF TITLE

SEC. 900. [42 U.S.C. 1305 note] This title may be cited as the "Medicare and Medicaid Amendments of 1980".

* * * * * * *

SEC. 914.
(b)

* * * * * * *

(2)[42 U.S.C. 1396a note] (A) The amendments made by paragraph (1) shall (except as provided under subparagraph (B)) apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title XIX of the Social Security Act.

* * *

(c) * * *
(2) [42 U.S.C. 705 note] The amendments made by paragraph (1) shall apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title V of the Social Security Act.

* * * * * * *

SEC. 915.

* * * * * * *

(b) [42 U.S.C. 1395x note] Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act on the day before the date of the enactment of this Act shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.

* * * * * * *

RESPONSE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS TO FREEDOM OF INFORMATION ACT REQUESTS

SEC. 928. [42 U.S.C. 1320c-9 note] No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.

* * * * * * *

SEC. 952.

* * * * * * *

(b) [42 U.S.C. 1395x note] Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.

* * * * * * *

DEMONSTRATION PROJECTS RELATING TO THE TRAINING OF AFDC RECIPIENTS AS HOME HEALTH AIDES[1]

SEC. 966. [42 U.S.C. 632a] (a) The Secretary of Health and Human Services shall enter into agreements with States, selected at his discretion, for the purpose of conducting demonstration projects for the training and employment of eligible participants as homemakers or home health aides, who shall provide authorized services to elderly or disabled individuals, or other individuals in need of such services, to whom such services, are not otherwise reasonably and actually available or provided, and who would, without the availability of such services, be reasonably anticipated to require institutional care.

(b) For purposes of this section, the term "eligible participant" means an individual who has voluntarily applied for participation and who, at the time such individual enters the project established under this section, has been certified by the appropriate agency of State or local government as being eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and as having continuously received such financial assistance during the ninety-day period which immediately precedes the date on which such individual enters such project and who, within such ninety-day period, had not been employed as a homemaker or home health aide.

(c)(1) The Secretary shall enter into agreements under this section with no more than twelve States. Priority shall be given to States which have demonstrated interest in providing services of the type authorized under this section.

(2) A State may apply to enter into an agreement under this section in such manner and at such time as the Secretary may prescribe. The Secretary shall, not later than October 1, 1981, establish such guidelines and establish such regulations as may be necessary to assure that agreements with at least seven States are entered into under this section by not later than January 1, 1982.

(3) Any State entering into an agreement with the Secretary under this section must—

(A) provide that the demonstration project shall be administered by a State health services agency designated for this purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act);

(B) provide that the agency designated pursuant to subparagraph (A) shall, to the maximum extent feasible, arrange for coordinating its activities under the agreement with activities of other State agencies having related responsibilities;

(C) establish a formal training program, which meets such standards as the Secretary may establish to assure the adequacy of such program, to prepare eligible participants to provide part-time and intermittent homemaker services or home health aide services to individuals who are elderly, disabled, or otherwise in need of such services;

(D) provide for the full-time employment of those eligible participants who successfully complete the training program with one or more public agencies (or, by contract, with private bona fide nonprofit agencies) as homemakers or home health aides, rendering authorized services, under the supervision of persons determined by the State to be qualified to supervise the performance of such services, to individuals described in subsection (a) at wage levels comparable to the prevailing wage levels in the area for similar work;

(E) provide that such services provided under subparagraph (D) shall be made available without regard to income of the individual requiring such services, but that a reasonable fee will be charged (on a sliding scale basis) for such services provided to individuals who have income in excess of 200 percent of the needs standard in such State under the State plan approved under part A of title IV of the Social Security Act for a household of the same size as such individual's household;

(F) provide for a system of continuing independent professional review by an appropriate panel, which is not affiliated with the entity providing the services involved, to assure that services are provided only to individuals reasonably determined to be in need of such supportive services;

(G) provide for evaluation of the project and review of all agencies providing services under the project;

(H) submit periodic reports to the Secretary as he may require; and

---

[1] P.L. 99-272, §9525, provided that the Secretary shall continue for one additional year the demonstration project conducted by the State of New Jersey pursuant to §966 of P.L. 96-499, and that Federal matching for that demonstration project shall be 50 percent.

(I) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(4) The number of participants in any project shall not exceed that number which the Secretary determines to be reasonable, based upon the capability of the agencies involved to train, employ, and properly utilize eligible participants. Such number may be appropriately modified, subsequently, with the approval of the Secretary.

(5) Any contract with a private bona fide nonprofit agency entered into pursuant to paragraph (3)(D) shall provide for reasonable reimbursement of such agencies for services on a basis proportionate to the amount of time allocated to individuals eligible to receive such services under this section (and, in case such agency is an institution, the amount of the reimbursement shall not exceed the amount of reimbursement which would have been payable if the services involved had been provided by a free-standing agency).

(6) For purposes of this section, a facility of the Veterans' Administration shall, at the request of the Administrator of Veterans' Affairs, be considered to be a public agency. In the case of any such facility which is so considered to be a public agency, of the costs determined under this section which are attributable to such facility, 90 percent shall be paid by the State and 10 percent by the Veterans' Administration.

(d)(1) For purposes of this section, authorized homemaker and home health aide services include part-time or intermittent—

(A) personal care, such as bathing, grooming, and toilet care;
(B) assisting patients having limited mobility;
(C) feeding and diet assistance;
(D) home management, housekeeping, and shopping;
(E) health-oriented recordkeeping;
(F) family planning services; and
(G) simple procedures for identifying potential health problems.

(2) Such authorized services do not include any services performed in an institution, or any services provided under circumstances where institutionalization would be substantially more efficient as a means of providing such services.

(e)(1) Agreements shall be entered into under this section between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as an additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 90 percent of the reasonable costs incurred (less the Federal share of any related fees collected) by such State during such quarter in carrying out a demonstration project under this section, including reasonable wages and other employment costs of eligible participants employed full time under such project (and, for purposes of determining the amount of such additional payment, the 10 percent referred to in subsection (c)(6), paid by the Veterans' Administration, shall be deemed to be a cost incurred by the State in carrying out such a project).

(2) Demonstration projects under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for planning and development, and up to six months for final evaluation and reporting. Federal funding under this subsection shall not be available for the employment of any eligible participant under the project after such participant has been employed for a period of three years.

(f) For purposes of title IV of the Social Security Act, any eligible participant taking part in a training program under a project authorized under this section shall be deemed to be participating in a work incentive program established by part C of such title.

(g) For the first year (and such additional immediately succeeding period as the State may specify) during which an eligible participant is employed under the project established under this section, such participant shall, notwithstanding any other provision of law, retain any eligibility for medical assistance under a State plan approved under title XIX of the Social Security Act, and any eligibility for social and supportive services provided under the State plan approved under part A of title IV of such Act, which such participant had at the time such participant entered the training program established under this section.

(h) The Secretary shall, during January 1982, submit to the Congress a report on steps taken by January 1, 1982, to enter into agreements under this section, including a general description of each of such agreements entered into by such date and the timetable under which he anticipates other such agreements will be entered into. Thereafter, the Secretary shall submit annual reports to the Congress evaluating the demonstration projects carried out under this section, and shall submit a final report to the Congress not more than six months after he has received the final reports from all States participating in such projects.

(i) The Secretary shall, and is hereby authorized to, waive such requirements, including formal solicitation and approval requirements, as will further expeditious and effective implementation of this section.

TITLE X—OTHER SOCIAL SECURITY ACT PROGRAMS; UNEMPLOYMENT COMPENSATION

* * * * * * *

SUBTITLE C—UNEMPLOYMENT COMPENSATION PROVISIONS

* * * * * * *

CERTIFICATION OF STATE UNEMPLOYMENT LAWS

SEC. 1025. [26 U.S.C. 3304 note] On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1954, which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

* * * * * * *

[*Internal References.*—Social Security Act §§303(e)(3), 1201, 1861(j)(13), (m) and (v)(1)(I) and P.L. 90-248, §402 (Vol. II, p. 478); P.L. 91-373, §202(a)(3) (Vol. II, p. 505) and P.L. 92-603, §222 (Vol. II, p. 525) have footnotes referring to P.L. 96-499.]

P.L. 96-598, Approved December 24, 1980 (94 Stat. 3485)

[Tread Rubber Excise Tax Refunds]

* * * * * * *

TREATMENT OF BONNER'S FERRY RESTORIUM UNDER THE SUPPLEMENTARY SECURITY INCOME PROGRAM

SEC. 4. [None assigned.] (a) TREATMENT AS NON-PUBLIC INSTITUTION.—For purposes of title XVI of the Social Security Act, the Boundary County Restorium (popularly known as the Bonner's Ferry Restorium) in Bonner's Ferry, Idaho, shall not be considered a public institution (within the meaning of section 1611(e)(1)(C) of such Act).

(b) EFFECTIVE DATE.—Subsection (a) shall apply to supplemental security income benefits payable under title XVI of the Social Security Act for months beginning with November 1980.

* * * * * * *

[*Internal Reference.*—Social Security Act §1611(e)(1)(C) has a footnote referring to P.L. 96-598.]

P.L. 97-35, Approved August 13, 1981 (95 Stat. 483)
Omnibus Budget Reconciliation Act of 1981

TITLE VI—HUMAN SERVICES PROGRAMS

* * * * * * *

Subtitle B—Community Services Block Grant Program

SHORT TITLE

SEC. 671. [42 U.S.C. 9901 note] This subtitle may be cited as the "Community Services Block Grant Act".

* * * * * * *

SEC. 673. [42 U.S.C. 9902] For purposes of this subtitle:

* * * * * * *

(2) The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on Bureau of the Census data[1]. The Secretary shall revise the poverty line annually (or at any shorter interval the Secretary deems feasible and desirable) which shall be used as a criterion of eligibility in community service block grant programs. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index For All Urban Consumers[2] during the annual or other interval immediately preceding the time at which the revision is made. Whenever the State determines that it serves the objectives of the block grant established by this subtitle the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.[3]

(3) The term "Secretary" means the Secretary of Health and Human Services.

* * * * * * *

---

[1] P.L. 98-288, §31(a)(1), struck out "established by the Director of the Office of Management and Budget" and substituted "defined by the Office of Management and Budget based on Bureau of the Census data".

[2] P.L. 98-288, §31(a)(2), inserted "For All Urban Consumers".

[3] P.L. 98-558, §202(b), added this sentence.

Title XXI—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH

* * * * * * *

Subtitle A—Provisions Relating to Medicare and Medicaid

CHAPTER I—REIMBURSEMENT CHANGES

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

SEC. 2101.

* * * * * * *

(b) [42 U.S.C. 1395uu note] (1) Notwithstanding section 1884(a) of the Social Security Act, the Secretary of Health and Human Services may not establish under such section transitional allowances with respect to more than 50 hospitals prior to January 1, 1984.

(2) The Secretary of Health and Human Services shall evaluate the effectiveness of the program of transitional allowances established under section 1884 of the Social Security Act and shall, not later than January 1, 1983, report to the Congress on such evaluation and include in such report such recommendations for such legislative changes as he deems appropriate.

* * * * * * *

ADJUSTMENT IN PAYMENT FOR INAPPROPRIATE HOSPITAL SERVICES

SEC. 2102.

* * * * * * *

(b) * * *

(2) [None assigned.] For amendments respecting reimbursement for inappropriate hospital services under medicaid, see section 2173 of this subtitle.

* * * * * * *

CHAPTER 3—PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS (PSRO'S)

* * * * * * *

ASSESSMENT OF PSRO PERFORMANCE

SEC. 2112. (a) * * *

(2) * * *

(D) [42 U.S.C. 1320c-10 note] The Secretary of Health and Human Services shall, not later than September 30, 1982, report to the Congress on his assessment (under section 1154(g) of the Social Security Act) of the relative performance of Professional Standards Review Organizations and on any determinations made not to renew agreements with such Organizations on the basis of such performance.

* * * * * * *

SUBTITLE B—PROVISIONS RELATING TO MEDICARE

* * * * * * *

CHAPTER 3—REIMBURSEMENT CHANGES

LIMITATION ON ROUTINE NURSING DIFFERENTIAL

SEC. 2141.

* * * * * * *

(b) [None assigned.] The Comptroller General shall conduct a study to determine the extent (if any) to which the average cost of efficiently providing routine inpatient nursing care to individuals entitled to benefits under title XVIII of the Social Security Act exceeds the average cost of providing such care to other patients. The Comptroller General shall submit a final report with respect to the results of such study to the Congress within six months after the date of the enactment of this Act.

* * * * * * *

CHAPTER 4—MISCELLANEOUS CHANGES

* * * * * * *

UTILIZATION GUIDELINES FOR PROVISION OF HOME HEALTH SERVICES

SEC. 2152.

* * * * * * *

(b) [42 U.S.C. 1395y note] The Secretary of Health and Human Services shall establish, and provide for the implementation of, the guidelines described in section 1862(f) of the Social Security Act not later than October 1, 1981.

* * * * * * *

SUBTITLE C—PROVISIONS RELATING TO MEDICAID

CHAPTER 1—CHANGES IN PAYMENTS TO STATES

* * * * * * *

STUDY OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FORMULA AND OF ADJUSTMENTS OF TARGET AMOUNTS FOR FEDERAL MEDICAID EXPENDITURES

SEC. 2165. [42 U.S.C 1396d note] (a) The Comptroller General, in consultation with the Advisory Committee for Intergovernmental Relations, shall conduct a study of—

(1) the formula, under section 1905(b) of the Social Security Act, defining the Federal medical assistance percentage, as it applies to distribution of Federal funds to States (as defined for purposes of title XIX of such Act) under that Act, and

(2) the validity and equity of any adjustment to the target amount of Federal medical expenditures (under section 1903(t) of the Social Security Act, added by section 2161 of this subtitle) for all States or any particular State which ought to be made for fiscal year 1983 or fiscal year 1984 (including methodology for calculating and implementing such adjustments) to reflect economic and demographic factors affecting such State which are out of the ordinary sphere of control of such State.

Specifically, pursuant to paragraph (1) the Comptroller General shall examine the feasibility and consequences of revising the medicaid matching formula so as to take into account the relative economic positions and needs of the different States, the different amounts of support and income payments made by different States under the Social Security Act, the relative cost of living and the unemployment rates in the different States, the relative taxable wealth and amount of taxes raised per capita by the different States, and other relevant factors bearing on an equitable distribution of Federal funds to States under that Act.

(b) The Comptroller General shall report to the Congress on the study required under this section not later than October 1, 1982.

* * * * * * *

CHAPTER 2—INCREASED FLEXIBILITY FOR STATES

* * * * * * *

FLEXIBILITY IN HMO AND PREPAID PROVIDER PARTICIPATION IN STATE PLANS

SEC. 2178.

* * * * * * *

(d) [42 U.S.C. 1396a note] The Secretary of Health and Human Services shall conduct a study evaluating the extent of, and reasons for, the termination by medicaid beneficiaries of their memberships in health maintenance organizations. In conducting such study, the Secretary shall place special emphasis on the quantity and quality of medical care provided in health maintenance organizations and the quality of such care when provided on a fee-for-service basis. The Secretary shall submit an interim report to the Congress, within two years after the date of the enactment of this Act, and a final report within five years from such date containing, respectively, the interim and final findings and conclusions made as a result of such study.

* * * * * * *

Subtitle D—Maternal and Child Health Services Block Grant

SHORT TITLE OF SUBTITLE

SEC. 2191. [42 U.S.C. 1305 note] This subtitle may be cited as the "Maternal and Child Health Services Block Grant Act".

MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

SEC. 2192.

* * * * * * *

(b) [42 U.S.C. 706 note] (1) The Secretary of Health and Human Services shall, no later than October 1, 1984, report to the Congress on the activities of States receiving allotments under title V of the Social Security Act (as amended by this section) and include in such report any recommendations for appropriate changes in legislation.

(2) The Secretary of Health and Human Services, in consultation with the Comptroller General, shall examine alternative formulas, for the allotment of funds to States under section 502(b) of the Social Security Act (as amended by this section) which might be used as a substitute for the method of allotting funds described in such

section, which provide for the equitable distribution of such funds to States (as defined for purposes of such section), and which take into account—

(A) the populations of the States,

(B) the number of live births in the States,

(C) the number of crippled children in the States,

(D) the number of low income mothers and children in the States,

(E) the financial resources of the various States, and

(F) such other factors as the Secretary deems appropriate, and shall report to the Congress thereon not later than June 30, 1982.

* * * * * * *

EFFECTIVE DATE; TRANSITION

SEC. 2194. [42 U.S.C. 701 note]

* * * * * * *

(b)(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") may not provide for any allotment to a State under title V of the Social Security Act (as amended by this subtitle) for a calendar quarter in fiscal year 1982 unless the State has notified the Secretary, at least 30 days (or 15 days in the case of the first calendar quarter of the fiscal year) before the beginning of the calendar quarter, that the State requests an allotment for that calendar quarter (and subsequent calendar quarters).

(2)(A) Any grants or contracts entered into under the authorities of the consolidated State programs (as defined in subsection (c)(2)(C)) after the date of the enactment of this subtitle shall permit the termination of such grant or contract upon three months notice by the State in which the grantee or contractor is located.

(B) The Secretary shall not make or renew any grants or contracts under the provisions of the consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the date the State becomes entitled to an allotment of funds under title V of the Social Security Act (as amended by this subtitle).

(3)(A) In the case of funds appropriated for fiscal year 1982 for consolidated health programs (as defined in subsection (c)(2)(A)), such funds shall (notwithstanding any other provision of law) be available for use under title V of the Social Security Act (as amended by this subtitle), subject to subparagraphs (B) and (C).

(B) Notwithstanding any other provision of law—

(i) the amount that may be made available for expenditures for the consolidated Federal programs for fiscal year 1982 and for projects and programs under section 502(a) of the Social Security Act (as amended by this subtitle) may not exceed the amount provided for projects and programs under such section 502(a) for that fiscal year, and

(ii) the amount that may be made available to a State (or entities in the State) for carrying out the consolidated State programs for fiscal year 1982 and for allotments to the State under section 502(b) of the Social Security Act (as amended by this subtitle) may not exceed the amount which is allotted to the State for that fiscal year under such section (without regard to paragraphs (3) and (4) thereof).

(C) For fiscal year 1982, the Secretary shall reduce the amount which would otherwise be available—

(i) for expenditures by the Secretary under section 502(a) of the Social Security Act (as amended by this subtitle) by the amounts which the Secretary determines or estimates are payable for consolidated Federal programs (as defined in subsection (c)(2)(B)) from funds for fiscal year 1982, and

(ii) for allotment to each of the States under section 502(b) of such Act (as so amended) by the amounts which the Secretary determines or estimates are payable to that State (or entities in the State) under the consolidated State programs (as defined in subsection (c)(2)(C)) from funds for fiscal year 1982.

(c) For purposes of this section:

(1) The term "State" has the meaning given such term for purposes of title V of the Social Security Act.

(2)(A) The term "consolidated health programs" has the meaning given such term in section 501(b) of the Social Security Act (as amended by this subtitle).

(B) The term "consolidated Federal programs" means the consolidated health programs—

(i) of special projects grants under sections 503 and 504, and training grants under section 511, of the Social Security Act,

(ii) of grants and contracts for genetic disease projects and programs under section 1101 of the Public Health Service Act, and

(iii) of grants or contracts for comprehensive hemophilia diagnostic and treatment centers under section 1131 of the Public Health Service Act,

as such sections are in effect before the date of the enactment of this subtitle.

(C) The term "consolidated State programs" means the consolidated health programs, other than the consolidated Federal programs.

(d) The provisions of chapter 2 of subtitle C of title XVII of this Act shall not apply to this subtitle (or the programs under the amendments made by this title) and, specifically, section 1745 of this Act shall not apply to financial and compliance audits conducted under section 506(b) of the Social Security Act (as amended by this subtitle).

* * * * * * *

REPEAL OF MINIMUM BENEFIT PROVISIONS

SEC. 2201.

* * * * * * *

[(e) Repealed.[4]]

* * * * * * *

TITLE XXIII—PUBLIC ASSISTANCE PROGRAMS

* * * * * * *

SUBTITLE B—SUPPLEMENTAL SECURITY INCOME BENEFITS

RETROSPECTIVE ACCOUNTING

---

[4] P.L. 97-123, §2(i); 95 Stat. 1661. Formerly §2201(e), read as follows:

"(e)(1) The Secretary of Health and Human Services shall recalculate the primary insurance amounts applicable to—

(A) beneficiaries whose benefits are based on a primary insurance amount that was computed under section 215(a)(1)(C)(i)(I) of the Social Security Act, and

(B) beneficiaries with average monthly wages of less than $76.00 and primary insurance benefits of less than $16.20 whose benefits are based on primary insurance amounts computed under section 215(a)(4) or section 215(a)(5) of such Act.

(2) In the case of individuals to whom sections 215(a)(1) and 215(a)(4) of such Act as in effect after December 1978 do not apply, the Secretary shall recalculate the primary insurance amount computed under section 215 as in effect in December 1978 as though the individual had first become entitled in December 1978; except that—

(A) the table in, or deemed to be in, the law as the result of the amendments made by subsection (c)(1) of this section shall be used in lieu of the table in effect in December 1978;

(B) in the case of individuals who were born after January 1, 1913, the first sentence of section 215(b)(3) of the law as so in effect shall be deemed to read: 'For purposes of paragraph (2) the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, after the year of attainment of age 21) and before 1961 or, if later, the earlier of the year in which such individual died or attained age 62.';

(C) in the case of individuals who were born prior to January 2, 1913, the first sentence of section 215(b)(3) of the law as so in effect shall be deemed to read: 'For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 and before 1961 or, if later, the earlier of the year in which such individual died or attained, in the case of a man (except as provided by section 104(j) of Public Law 92-603) age 65, or in the case of a woman, age 62.';

(D) section 215(b)(4) of the law as so in effect shall be disregarded;

(E) section 215(d)(2)(C) of the law as so in effect shall be disregarded;

(F) section 215(d)(4) of the law as so in effect shall be deemed, for purposes of such recalculation, to read:

'(4) The provisions of this subsection as in effect in December 1977 (but without regard to paragraph (2)(C)) shall be applicable to individuals who became eligible for old-age or disability insurance benefits or died prior to 1978.';

(G) in the case of individuals who became disabled, died, or attained age 65 prior to 1951, the Secretary shall by regulations provide an alternative computation in lieu of the computation provided by the law as so in effect (and modified by this paragraph); and

(H) in no event may the recalculated primary insurance amount exceed the primary insurance amount that is based on an average monthly wage of $76.00 or the primary insurance amount that is based on a primary insurance benefit of $16.20.

(3) In the case of individuals to whom either section 215(a)(1) or (4) of such Act apply, the primary insurance amount shall be recalculated under section 215 as in effect after December 1978; except that the table in or deemed to be in the law as a result of the amendments made by subsection (c)(1) of this section shall be used (where appropriate) in lieu of the table in effect in December 1978.".

SEC. 2341. [42 U.S.C. 1382 note]

* * * * * * *

(c) [42 U.S.C. 1382 note] * * *

(2) The Secretary of Health and Human Services may, under conditions determined by him to be necessary and appropriate, make a transitional payment or payments during the first two months for which the amendments made by this section are effective. A transitional payment made under this section shall be deemed to be a payment of supplemental security income benefits.

* * * * * * *

SUBTITLE C—BLOCK GRANTS FOR SOCIAL SERVICES

SHORT TITLE

SEC. 2351. [42 U.S.C. 1305 note] This subtitle may be cited as the "Social Services Block Grant Act".

* * * * * * *

SEC. 2353.

* * * * * * *

(b) * * *

(2) [42 U.S.C. 602 note] Sections 402(a)(5), 402(a)(15), and 403(a)(3) of such Act as they apply to the fifty States and the District of Columbia shall be applicable to Puerto Rico, Guam, and the Virgin Islands.

* * * * * * *

STUDY OF STATE SOCIAL SERVICE PROGRAMS

SEC. 2355. [42 U.S.C. 1397 note] The Secretary of Health and Human Services shall conduct a study to identify criteria and mechanisms which may be useful for the States in assessing the effectiveness and efficiency of the State social service programs carried out with funds made available under title XX of the Social Security Act. The study shall include consideration of Federal incentive payments as an option in rewarding States having high performance social service programs. The Secretary shall report the results of such study to the Congress within one year after the date of the enactment of this Act.

* * * * * * *

TITLE XXVI—LOW-INCOME HOME ENERGY ASSISTANCE

SHORT TITLE

SEC. 2601. [42 U.S.C. 8621 note] This title may be cited as the "Low-Income Home Energy Assistance Act of 1981".

HOME ENERGY GRANTS AUTHORIZED

SEC. 2602. [42 U.S.C. 8621] (a) The Secretary of Health and Human Services is authorized to make grants, in accordance with the provisions of this title, to States to assist eligible households to meet the costs of home energy.

(b) There are authorized to be appropriated to carry out the provisions of this title $2,050,000,000 for fiscal year 1987, $2,132,000,000 for fiscal year 1988, $2,218,000,000 for fiscal year 1989, and $2,307,000,000 for fiscal year 1990.[5]

DEFINITIONS

SEC. 2603. [42 U.S.C. 8622] As used in this title:

(1) The term "energy crisis"[6] means weather-related and supply shortage emergencies and other household energy-related emergencies[7].

---

[5] P.L. 98-558, §601, amended subsection (b) in its entirety.
P.L. 99-425, §501, amended subsection (b) in its entirety.

[6] P.L. 98-558, §602(a)(1), struck out "intervention".

[7] P.L. 98-558, §602(a)(2), inserted "and other household energy-related emergencies".

(2) the[8] term "household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent;[9]

(3) The term "home energy" means a source of heating or cooling in residential dwellings.

(4) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 673(2) of the Community Services Block Grant Act, as applicable to such State.[10]

(5) The term "Secretary" means the Secretary of Health and Human Services.

(6) The term "State" means each of the several States and the District of Columbia.

(7) The term "State median income" means the State median income promulgated by the Secretary in accordance with procedures established under section 2002(a)(6) of the Social Security Act (as such procedures were in effect on the day before the date of the enactment of this Act) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

STATE ALLOTMENTS

SEC. 2604. [42 U.S.C. 8623] (a)(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the amount appropriated under section 2602(b) for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 2609A and[11] after the amount of allotments for such fiscal year under subsection (b)(1) is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 2609A[12], if for any period a State has a plan which is described in section 2605(c)(1), the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 2605(b)(9)(B)), with respect to households described in section 2605(b)(2).

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98-139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this title for fiscal year 1984 had been $1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.[13]

(3) If the sums appropriated for any fiscal year for making grants under this title are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this title for such fiscal year shall be ratably reduced.

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.[14]

(b)(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this title on the basis of need among the Commonwealth of Puerto Rico,

---

[8] As in original. Possibly should be "The".

[9] As in original. Possibly should be a period.

[10] P.L. 98-558, §602(b), amended paragraph (4) in its entirety.

[11] P.L. 99-425, §505(b)(1), inserted "after reserving any amount permitted to be reserved under section 2609A and".

[12] P.L. 99-425, §505(b)(2), inserted "after reserving any amount permitted to be reserved under section 2609A".

[13] P.L. 98-558, §604(a), amended paragraph (2) in its entirety.

[14] P.L. 98-558, §604(b), added paragraph (4).

Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this title upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this title, and which are consistent with the requirements of section 2605.

(c) Of the funds available to each State under subsection (a), a reasonable amount based on data from prior years shall be reserved until March 15 of each program year[15] by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this Act, experience in assisting low-income individuals in the area to be served,[16] the capacity to undertake a timely and effective energy crisis intervention program, and the ability to carry out the program in local communities[17].[18] The program for which funds are reserved under this subsection shall—

(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

(3) require each entity that administers such program—

(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(B) to provide to low-income individuals who are physically infirm the means—

(i) to submit applications for energy crisis benefits without leaving their residences; or

(ii) to travel to the sites at which such application are[19] accepted by such entity.[20]

The preceding sentence shall not apply to a program in a geographical area affected by a natural disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974, for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

(d)(1) If, with respect to any State, the Secretary—

(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this title be made directly to such organization; and

(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this title;

the Secretary shall reserve from amounts which would otherwise be payable[21] to such State from amounts allotted to it under this title for the fiscal year involved the amount determined under paragraph (2).

(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this title for such fiscal year (other than by reason of section 2607(b)(2)) as the number of Indian households described in subparagraphs (A) and (B) of section 2605(b)(2) and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation[22] bears to the number of all households described in subparagraphs (A) and (B) of section 2605(b)(2) in such State, or such greater amount as the Indian tribe and the State may agree upon[23]. In cases

---

[15] P.L. 98-558, §603(a)(1), inserted "until March 15 of each program year".

[16] P.L. 99-425, §502(a)(1)(A), struck out "and".

[17] P.L. 99-425, §502(a)(1)(B), inserted ", and the ability to carry out the program in local communities".

[18] P.L. 98-558, §603(a)(2), added this sentence.

[19] As in original.

[20] P.L. 99-425, §502(a)(2), inserted "The program for which funds are reserved under this subsection shall—", paragraphs (1), (2), and (3), and this sentence.

[21] P.L. 98-558, §603(b), struck out "paid" and substituted "payable".

[22] P.L. 99-425, §503(1), struck out "in such State with respect to which a determination under this subsection is made" and substituted "and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation".

[23] P.L. 59-425, §503(2), inserted ", or such greater amount as the Indian tribe and the State may agree upon".

where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.[24]

(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to—

(A) the tribal organization serving the individuals for whom such a determination has been made; or

(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this title.

(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meets such criteria as the Secretary may by regulations prescribe.

[(e) Repealed.[25]]

(f) A State may transfer up to 10 percent of the funds payable to it[26] under this section for any fiscal year for its use for such fiscal year under other provisions of Federal law providing block grants for—

(1) support of activities under subtitle B of title VI (relating to community services block grant program);

(2) support of activities under title XX of the Social Security Act; or

(3) support of preventive health services, alcohol, drug, and mental health services, and primary care under title XIX of the Public Health Service Act, and maternal and child health services under title V of the Social Security Act;

or any combination of the activities described in paragraphs (1), (2), and (3). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this title shall be treated as if they were paid to the State under this title but shall not affect the computation of the State's allotment under this title. The State shall inform the Secretary of any such transfer of funds.

APPLICATIONS AND REQUIREMENTS

SEC. 2605. [42 U.S.C. 8624] (a)(1) Each State desiring to receive an allotment for any fiscal year under this title shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b).

(2) After the expiration of the first fiscal year for which a State receives funds under this title, no funds shall be allotted to such State for any fiscal year under this title unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this title for such fiscal year.

(b) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this title for the purposes described in section 2602(a) and otherwise in accordance with the requirements of this title, and agrees not to use such funds for any payments other than payments specified in this section[27];

(2) make payments under this title only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

---

[24] P.L. 99-425, §503(3), added this sentence.
[25] P.L. 98-558, §603(c), repealed subsection (e).
[26] P.L. 98-558, §603(d), struck out "its allotment" and substituted "the funds payable to it".
[27] P.L. 98-558, §605(a)(1), struck out "subsection" and substituted "section".

(ii) an amount equal to 60 percent of the State median income;

except that no household may be excluded from eligibility under this subclause for payments under this title for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year[28]

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or handicapped individuals, or both, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner[29], that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection[30];

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that—

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely[31] because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) assure that any home energy supplier receiving direct payments agrees not to discriminate, either in the cost of the goods supplied or the services provided, against the eligible household on whose behalf payments are made;

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits

---

[28] P.L. 98-558, §605(a)(2), added "except that no household may be excluded from eligibility under this subclause for payments under this title for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

As in original. Possibly should be followed by a semicolon.

[29] P.L. 99-425, §504(a), struck out "manner consistent with the efficient and timely payment of benefits" and substituted "timely manner".

[30] P.L. 98-558, §605(a)(3), inserted ", except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection".

[31] P.L. 98-558, §605(a)(4), struck out "any differently" and substituted "adversely".

under clause (2), and (B)[32] the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a fiscal year and not transferred pursuant to section 2604(f) for use under another block grant; and[33]

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining costs;

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that at least every two years[34] the State shall prepare an audit of its expenditures of amounts received under this title and amounts transferred to carry out the purposes of this title;

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for public participation in the development of the plan described in subsection (c);[35]

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and[36]

(14)[37] cooperate with the Secretary with respect to data collecting and reporting under section 2610.[38]

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this title.[39]

(c)(1) As part of the annual application required in subsection (a), the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this title, including criteria for designating an emergency under section 2604(c);[40]

(B) describes the benefit levels to be used by the States for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;[41]

(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 2604(c) in the event any portion of the amount so reserved is not expended for emergencies;[42]

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k);[43]

(E) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), and (13) of subsection (b); and[44]

(F) contains any other information determined by the Secretary to be appropriate for purposes of this title.[45]

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary[46].

(2) Each plan prepared under paragraph (1) and each substantial revision thereof[47]

---

[32] P.L. 98-558, §605(a)(5), inserted "(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B)".

[33] P.L. 98-558, §605(a)(6), amended subparagraph (A) in its entirety.

[34] P.L. 98-558, §605(a)(7), struck out "year" and substituted "two years".

[35] P.L. 98-558, §605(a)(8)(A), struck out "and".

[36] P.L. 98-558, §605(a)(8)(B), struck out the period and substituted a semicolon.
P.L. 99-425, §504(b)(2), inserted "and".

[37] P.L. 99-425, §504(b)(1), struck out paragraphs (14), (15), and (16) and §504(b)(3) redesignated paragraph (17) as paragraph (14).

[38] P.L. 98-558, §605(a)(8)(C), added this paragraph.

[39] P.L. 98-558, §605(a)(9), added this sentence.

[40] P.L. 99-425, §504(c), amended subparagraph (A) in its entirety.

[41] P.L. 99-425, §504(c), amended subparagraph (B) in its entirety.

[42] P.L. 99-425, §504(c), amended subparagraph (C) in its entirety.

[43] P.L. 99-425, §504(c), amended subparagraph (D) in its entirety.

[44] P.L. 99-425, §504(c), amended subparagraph (E) in its entirety.

[45] P.L. 99-425, §504(c), added subparagraph (F).

[46] P.L. 98-558, §605(b)(1), amended paragraph (1) in its entirety.

[47] P.L. 98-558, §605(b)(2)(A), inserted "and each substantial revision thereof".

shall be made available for public inspection within the State involved in such a manner as will facilitate review of, and comment upon, such plan or substantial revision[48].

(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.[49]

(d) The State shall expend funds in accordance with the State plan under this title or in accordance with revisions applicable to such plan.[50]

(e) Each State shall, in carrying out the requirements of subsection (b)(10), obtain financial and compliance audits of any funds which the State receives under this title. Such audits shall be made public within the State on a timely basis. The audits shall be conducted at least every two years by an organization or person independent of any agency administering activities under this title. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary.[51]

(f)(1)[52] Notwithstanding any other provision of law unless enacted in express limitation of this paragraph[53], the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of,[54] an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.[55]

(g) The State shall repay to the United States amounts found not to have been expended in accordance with this title or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(h) The Comptroller General of the United States shall, from time to time (but not less frequently than every three years)[56], evaluate the expenditures by States of grants under this title in order to assure that expenditures are consistent with the provisions of this title and to determine the effectiveness of the State in accomplishing the purposes of this title.

(i) A household which is described in subsection (b)(2)(A) solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act by reason of being in an institution receiving payments under title XIX of the Social Security Act with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act who is living together with a parent, or the spouse of a parent, of the child.

(j) In verifying income eligibility for purposes of subsection (b)(2)(B), the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under subtitle B of title VI of this Act (relating to community services block grant program), under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act, or under other income assistance or service programs (as determined by the State).

---

[48] P.L. 98-558, §605(b)(2)(B), inserted "or substantial revision".
[49] P.L. 99-425, §504(d), added paragraph (3).
[50] P.L. 98-558, §605(c), amended subsection (d) in its entirety.
[51] P.L. 98-558, §605(d), amended subsection (e) in its entirety.
[52] P.L. 99-425, §504(e)(1), inserted "(1)".
[53] P.L. 98-558, §605(e), inserted "unless enacted in express limitation of this paragraph".
[54] P.L. 99-425, §504(e)(2), struck out "to" and substituted "directly to, or indirectly for the benefit of,".
[55] P.L. 99-425, §504(e)(3), added paragraph (2).
[56] P.L. 98-558, §605(f), inserted "(but not less frequently than every three years)".

(k) Not more than 15 percent of the greater of—

(1) the funds allotted to a State under this title for any fiscal year; or

(2) the funds available to such State under this title for such fiscal year;

may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households.

(l)(1) Any State may use amounts provided under this title for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.

(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.

(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) and suppliers will not be impeded by the use of such data.

NONDISCRIMINATION PROVISIONS

SEC. 2606. [42 U.S.C 8625] (a) No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 also shall apply to any such program or activity.

(b) Whenever the Secretary determines that a State that has received a payment under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable; or (3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

PAYMENTS TO STATES

SEC. 2607. [42 U.S.C. 8626] (a) From its allotment under section 2604, the Secretary shall make payments to each State in accordance with section 203 of the Intergovernmental Cooperation Act of 1968, for use under this title.

(b)(1) If—

(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 2604 for any fiscal year will not be used by such State during such fiscal year;

(B) the Secretary—

(i) notifies the chief executive officer of such State; and

(ii) publishes a timely notice in the Federal Register;

that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallotted; and

(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year;

then such amount shall be treated by the Secretary for purposes of this title as an amount appropriated for the following fiscal year to be allotted under section 2604 for such following fiscal year.

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year.[57] Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to[58] such State for such fiscal year under this title.

---

[57] P.L. 98-558, §606(a)(2), added this sentence.

[58] P.L. 98-558, §606(a)(1), inserted "or the amount payable to".

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 15[59] percent of the amount payable to such State for such prior fiscal year and not transferred pursuant to section 2604(f)[60]. For purposes of the preceding sentence, the amount payable to a State but not transferred by the State[61] for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallot amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.[62]

(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallot funds, and shall publish such decision in the Federal Register.

WITHHOLDING

SEC. 2608. [42 U.S.C. 8627] (a)(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this title and the assurances such State provided under section 2605.

(2) The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this title or the assurances provided by the State under section 2605. For purposes of this paragraph, a violation of any one of the assurances contained in section 2605(b) that constitutes a disregard of such assurance shall be considered a serious complaint.

(b)(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this title in order to evaluate compliance with the provisions of this title.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary[63] shall conduct an investigation of the use of funds received under this title by such State in order to ensure compliance with the provisions of this title.

(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this title by a State in order to ensure compliance with the provisions of this title.

(c) Pursuant to an investigation conducted under subsection (b), a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) In conducting any investigation under subsection (b), the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

LIMITATION ON USE OF GRANTS FOR CONSTRUCTION

SEC. 2609. [42 U.S.C. 8628] Grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

TECHNICAL ASSISTANCE AND TRAINING[64]

SEC. 2609A. [42 U.S.C. 8628a] (a) Of the amounts appropriated under section 2602(b) for any fiscal year, not more than $500,000 of such amounts may be reserved by the Secretary—

(1) to make grants to State and public agencies and private nonprofit organizations; or

---

[59] P.L. 98-558, §606(b)(1)(A), struck out "25" and substituted "15".

[60] P.L. 98-558, §606(b)(1)(B), struck out "allotted to such State for such prior fiscal year" and substituted "payable to such State for such prior fiscal year and not transferred pursuant to section 2604(f)".

[61] P.L. 98-558, §606(b)(2), struck out "allotted to a State" and substituted "payable to a State but not transferred by the State".

[62] P.L. 98-558, §606(c), added subparagraph (C).

[63] P.L. 98-558, §608, struck out "he" and substituted "the Secretary".

[64] P.L. 99-425, §505(a), added §2609A.

(2) to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations;

to provide for training and technical assistance related to the purposes of this subtitle, including collection and dissemination of information about programs and projects assisted under this subtitle, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this title.

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

STUDIES[65]

SEC. 2610. [42 U.S.C. 8629] (a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount,[66] cost and type of fuels used for households eligible for assistance under this title[67];

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this title;[68]

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or handicapped; and[69]

(6)[70] any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this title.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.[71]

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) with respect to the prior fiscal year, and a report that describes for the prior fiscal year—

(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 2605(b); and

(2) the impact of each State's program on recipient and eligible households[72].[73]

REPEALER

SEC. 2611. [42 U.S.C. 8601 note] Effective October 1, 1981, the Home Energy Assistance Act of 1980 is repealed.

* * * * * * *

[*Internal References.*—Social Security Act §2003(d) cites the Omnibus Budget Reconciliation Act of 1981, §§501(b)(1)(end) and 505(2)(C)(i) cite the Maternal and Child Health Services Block Grant (date of enactment) - (Title XXI of P.L. 97-35); §§501(b)(2), 1902(l)(2) and (m)(2)(A), and 1905(p)(2)(A) cite §673(2) and §202(i) cites §2201. There are footnotes referring to this public law at Social Security Act §§402(a)(7)(C)(ii), 1002(a)(8)(C), 1402(a)(8)(C), 1602(a)(14)(D)(State), and P.L. 88-525, §5(e) and the catchlines for §§1612(b) and 1613(a).]

P.L. 97-92, Approved December 15, 1981 (95 Stat. 1183)

[Continuing Appropriations for Fiscal Year 1982]

* * * * * * *

SEC. 118. [42 U.S.C. 1396b note] Notwithstanding section 1903(s) of the Social Security Act, all medicaid payments to the States for Indian health service facilities as defined by section 1911 of the Social Security Act shall be paid entirely by Federal funds, and notwithstanding section 1903(t) of the Social Security Act, all medicaid payments to the States for Indian health service facilities shall not be included in the computation of the target amount of Federal medicaid expenditures.

---

[65] Section 2610 as in effect before October 30, 1984, shall apply to the report submitted for fiscal year 1984.

[66] P.L. 98-558, §607(a)(1), inserted "amount,".

[67] P.L. 98-558, §607(a)(2), added "for households eligible for assistance under this title".

[68] P.L. 98-558, §607(b)(1), struck out "and".

[69] P.L. 98-558, §607(b)(3), inserted this clause (5).

[70] P.L. 98-558, §607(b)(2), redesignated the former clause (5) as clause (6).

[71] P.L. 98-558, §607(c), added this sentence.

[72] P.L. 99-425, §506, inserted ", and a report that describes for the prior fiscal year—" and paragraphs (1) and (2).

[73] P.L. 98-558, §607(d), amended subsection (b) in its entirety.

* * * * * * *

[*Internal References.*—Provision included as a historical reference. P.L. 97-35, §2161(c) [as amended by P.L. 97-248, §137(a)(2)] repealed §1903(s) and (t).].

P.L. 97-123, Approved December 29, 1981 (95 Stat. 1659)

[Amendments to P.L. 97-35]

* * * * * * *

SEC. 3.

* * * * * * *

(e) [26 U.S.C. 3121 note] For purposes of applying section 209 of the Social Security Act, section 3121(a) of the Internal Revenue Code of 1954, and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2)[1] of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1954, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service.

* * * * * * *

REPORT TO CONGRESS

SEC. 7. [None assigned.] The Secretary of Health and Human Services shall report to the Congress within ninety days after the date of the enactment of this Act with respect to the actions being taken to prevent payments from being made under title II of the Social Security Act to deceased individuals, including to the extent possible the use of the death records available under the medicare program to screen the cash benefit rolls for such deceased individuals.

* * * * * * *

[*Internal Reference.*—Social Security Act §209(b)(1) has a footnote referring to P.L. 97-123.]

P.L. 97-127, Approved December 29, 1981 (95 Stat. 1675)

Czechoslovakian Claims Settlement Act of 1981

* * * * * * *

SOCIAL SECURITY AGREEMENT

SEC. 11. [22 U.S.C. note preceding §1642] The Secretary of State shall conduct a detailed review of the exchange of letters between the United States and Czechoslovakia providing for reciprocal social security payments to residents of the two countries. Such review should include an examination of the extent to which Czechoslovakia is complying with the spirit and provisions of the letters, a comparison of the benefits being realized by residents of Czechoslovakia and of the United States under the letters, and an evaluation of the basis of differences in such benefits. The Secretary of State, in consultation with the Department of Health and Human Services, shall report to the Congress, not later than six months after the date of the enactment of this Act, the results of such review, together with any recommendations for legislation or changes in the agreement made by the letters that may be necessary to achieve greater comparability and equity of benefits for the residents of the two countries. Such report should include specific assessments of the feasibility, likely effects, and advisability of terminating United States social security payments to residents of Czechoslovakia in response to inequities and incomparabilities of benefits payments under the exchange of letters.

[*Internal Reference.*—The catchline to Social Security Act §202(t) has a footnote referring to P.L. 97-127.]

---

[1] P.L. 98-21, §324(c)(3)(A), redesignated §209(b)(2) as §209(b)(1).

P.L. 97-248, Approved September 3, 1982 (96 Stat. 324)
Tax Equity and Fiscal Responsibility Act of 1982

SEC. 101. * * *

(b) [42 U.S.C. 1395ww note] * * *

(2)(A) The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement such amendments on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than March 31, 1983.

(B) Chapter 35 of title 44, United States Code, shall not apply, until January 1, 1984, to collection of information and information collection requests which the Secretary of Health and Human Services determines to be necessary to carry out the amendments made by this section.

* * * * * * *

SEC. 108. * * *

(b) [42 U.S.C. 1395xx note] The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.

* * * * * * *

ELIMINATION OF PRIVATE ROOM SUBSIDY

SEC. 111. (a) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act, not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

(b) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) as may be necessary to implement subsection (a) by October 1, 1982. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.

* * * * * * *

SEC. 113. * * *

(b) [42 U.S.C. 1395u note] * * *

(2) The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement the amendment made by subsection (a) on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.

* * * * * * *

SEC. 114. [42 U.S.C. 1395mm note] * * *

(c)(1) Subject to paragraph (2), the amendment made by subsection (a) shall apply with respect to services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

(i) the individual requests at any time that the amendment apply, or

(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if —

(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

(ii) on the date of the enactment of this Act the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act (as amended by this Act, other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act (as amended by this Act), but (except as provided in subparagraph (A))—

(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

(ii) no payment may be made under section 1876 of such Act with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act (as amended by this Act).

(C) For purposes of this paragraph, the term "current, nonrisk medicare enrollee" means, with respect to an organization, an individual who on the initial effective date—

(i) is enrolled with that organization under an existing cost contract, and

(ii) is entitled to benefits under part A and enrolled under part B[1], or enrolled in part B, of title XVIII of the Social Security Act.

(D) For purposes of this paragraph, the term "new medicare enrollee" means, with respect to an organization, an individual who—

(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act, and

(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title.

(E) The preceding provisions of this paragraph shall not to[2] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.[3]

(3) For purposes of this subsection:

(A) The term "existing cost contract" means a contract which is entered into under section 1876 of the Social Security Act, as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section

---

[1] P.L. 98-369, §2354(c)(3)(A), inserted "and enrolled under part B".

[2] As in original.

[3] P.L. 99-509, §9312(a), added subparagraph (E).

1833(a)(1)(A) of such Act, and which is not an existing risk-sharing contract or an existing demonstration project.

(B) The term "existing risk-sharing contract" means a contract entered into under section 1876(i)(2)(A) of the Social Security Act, as in effect before the initial effective date.

(C) The term "existing demonstration project" means a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, relating to the provision of services for which payment may be made under title XVIII of the Social Security Act.

(D) The term "new risk-sharing contract" means a contract entered into under section 1876(g) of the Social Security Act, as amended by this Act.

(E) The term "reasonable cost reimbursement contract" means a contract entered into[4] under section 1876(h) of such Act, as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act[5].

(4) As used in this section, the term "initial effective date" means—

(A) the first day of the thirteenth month which begins after the date of the enactment of this Act, or

(B) the first day of the first month after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act, as amended by this Act) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later.[6]

(d) The Secretary of Health and Human Services shall conduct a study of the additional benefits selected by eligible organizations pursuant to section 1876(g)(2) of the Social Security Act, as amended by subsection (a) of this section. The Secretary shall report to the Congress within 24 months of the initial effective date (as defined in subsection (c)(4)) with respect to the findings and conclusions made as a result of such study.

(e) The Secretary of Health and Human Services shall conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act. Such study may be coordinated with the study provided for under section 2178(d) of the Omnibus Budget Reconciliation Act of 1981. In conducting such study, the Secretary shall place special emphasis on the quantity and quality of medical care provided in such organizations and the quality of such care when provided on a fee-for-service basis. The Secretary shall submit an interim report to the Congress, within two years after the initial effective date (as defined in subsection (c)(4)), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

SEC. 115. (a) [None assigned.] Effective September 30, 1982, section 131 of Public Law 97-92 is repealed, and the provisions of such section, and of section 210 of the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1982 (H.R. 4560), as passed by the House of Representatives on October 6, 1981, and of section 209 of such Act as reported by the Senate Committee on Appropriations on November 9, 1981, shall not apply to any sums appropriated for fiscal year 1983 or any succeeding fiscal year.

(b) [42 U.S.C. 1395y note] No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) or section 1903(i)(5) of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981, or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act and specifically states that such provision is to supersede this section.

* * * * * * *

---

[4] P.L. 98-369, §2354(c)(3)(B)(i), struck out "section 1833(a)(1) of the Social Security Act or"
P.L. 98-617, §3(a)(5), struck out "under".

[5] P.L. 98-369, §2354(c)(3)(B)(ii), added ", or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act".

[6] Based on notification to the appropriate Congressional Committees on January 15, 1985, the initial effective date for P.L. 97-248, §114, is February 1, 1985.

AUDIT AND MEDICAL CLAIMS REVIEW

SEC. 118. [42 U.S.C. 1395h note] In addition to any funds otherwise provided[7] for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act, there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988[8] for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments[9], consistent with the provisions of sections 1816 and 1842 of the Social Security Act.

PRIVATE SECTOR REVIEW INITIATIVE

SEC. 119. [42 U.S.C. 1395cc note] (a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

(b) [42 U.S.C. 1395cc note] Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act, such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title, from collecting any payments from beneficiaries unless otherwise provided under such title.

TEMPORARY DELAY IN PERIODIC INTERIM PAYMENTS

SEC. 120. [42 U.S.C. 1395g note] Notwithstanding section 1815(a) of the Social Security Act, in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984; and

(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.

PART II—CHANGES IN BENEFITS, PREMIUMS, AND ENROLLMENT

MEDICARE COVERAGE OF FEDERAL EMPLOYEES

SEC. 121. [None assigned.] For provisions providing certain employees of the United States and instrumentalities thereof with entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act, see section 278 of this Act.

* * * * * * *

SEC. 122. * * *

(h)(1) [42 U.S.C. 1395c note] The[10] amendments made by this section apply to hospice care provided on or after November 1, 1983[11].[12]

(2) [42 U.S.C. 1395f note] In order to provide for the timely implementation of the amendments made by this Act, the Secretary of Health and Human Services shall, not later than September 1, 1983, promulgate such final regulations as may be necessary to set forth—

(A) a description of the care included in "hospice care" and the standards for qualification of a "hospice program", under section 1861(dd) of the Social Security Act, and

---

[7] P.L. 99-272, §9216(a)(1), struck out "for fiscal years 1983, 1984, and 1985".

[8] P.L. 99-272, §9216(a)(2), struck out "such fiscal years" and substituted "fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988".

[9] P.L. 99-272, §9216(a)(3), struck out "the purpose of carrying out provider cost audits and reviews of medical necessity" and substituted "purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments".

[10] P.L. 99-272, §9123(a)(1)(A), struck out "(A) Subject to subparagraph (B), the" and substituted "The".

[11] P.L. 99-272, §9123(a)(1)(B), struck out ", and before October 1, 1986".

[12] P.L. 99-272, §9123(a)(2), struck out subparagraph (B).

(B) the standards for payment for hospice care under part A of title XVIII of such Act, pursuant to section 1814(i) of such Act.

(i) [42 U.S.C. 1395b-1 note] (1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

(2) Prior to September 30, 1983, the Secretary shall submit to Congress a report on the effectiveness of demonstration projects referred to in paragraph (1), including an evaluation of the cost-effectiveness of hospice care, the reasonableness of the 40-percent cap amount for hospice care as provided in section 1814(i) of the Social Security Act (as added by this section), proposed methodology for determining such cap amount, proposed standards for requiring and measuring the maintenance of effort for utilizing volunteers as required under section 1861(dd) of such Act, an evaluation of physician reimbursement for services furnished as a part of hospice care and for services furnished to individuals receiving hospice care but which are not reimbursed as a part of the hospice care, and any proposed legislative changes in the hospice care provisions of title XVIII of such Act.

(3)(A) Notwithstanding the provisions of paragraph (1), the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of a hospice demonstration project described in paragraph (1) until September 30, 1986, if the hospice involved in such demonstration project does not provide hospice care directly but acts as a channeling agency for the provision of hospice care.

(B) During the period after the date on which a hospice demonstration project described in subparagraph (A) would otherwise have terminated under the provisions of paragraph (1), and prior to September 30, 1986, any such hospice demonstration project shall be subject to the same requirements as are imposed under the hospice program provided for under the amendments made by this section with respect to reimbursement and benefits, other than the requirement that certain benefits be provided directly by the hospice involved.

(j) [42 U.S.C. 1395f note] (1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, report to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).

(k) [42 U.S.C. 1395f note] The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act (relating to the cap amount), section 1861(dd)(1)(G) of such Act (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(iii) of such Act (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner as a hospice program under title XVIII of the Social Security Act.

* * * * * * *

SPECIAL ENROLLMENT PROVISIONS FOR MERCHANT SEAMEN

SEC. 125. (a) [42 U.S.C. 1395i-2 note] Any individual who—

(1) was entitled to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act (as in effect on September 30, 1981), including such entitlement on the basis of continuing medical care under 42 C.F.R. §32.17, at any time during the period beginning on March 10, 1981, and ending on October 1, 1981, and

(2) as of September 30, 1981, was eligible under section 1818(a) or section 1836 of the Social Security Act to enroll in the insurance program established by part A or part B, respectively, of title XVIII of that Act (hereinafter in this section referred to as the "respective program"),

may enroll (if not otherwise enrolled) in the respective program during the period beginning on the first day of the first month beginning at least 20 days after the date of the enactment of this Act and ending on December 31, 1982.

(b) [42 U.S.C. 1395i-2 note] (1) The coverage period under the respective program of an individual who enrolls under subsection (a) shall begin—

(A) on the first day of the month following the month in which the individual enrolls, or

(B) on October 1, 1981, if the individual files a request for this subparagraph to apply and pays the monthly premiums for the months so covered.

(2) The coverage period under the respective program of an individual described in subsection (a) who enrolled in the respective program before the enrollment period described in that subsection shall be retroactively extended to October 1, 1981, if the individual files a request before January 1, 1983, for such retroactive extension and pays the monthly premiums for the months so covered.

(c) [42 U.S.C. 1395i-2 note] (1) For purposes of section 1839(d) of the Social Security Act with respect to the monthly premium for months after September 1981, if an individual described in subsection (a) has enrolled in the insurance program under part B of title XVIII of the Social Security Act at any time before the end of the enrollment period described in subsection (a), any month (before the end of that enrollment period) in which he was not enrolled in that program shall not be treated as a month in which he could have been enrolled in the program.

(2) Paragraph (1) shall not apply to an individual—

(A) if the individual has enrolled in the insurance program before March 10, 1981, unless the enrollment was terminated solely because the individual lost eligibility to be so enrolled, or

(B) unless the individual applies for the benefit of such paragraph before January 1, 1983.

(d) [42 U.S.C. 1395i-2 note] (1) The Secretary of Health and Human Services, beginning as soon as possible but not later than 30 days after the date of the enactment of this Act, shall provide for the dissemination of information—

(A) to unions and other associations representing or assisting seamen,

(B) to offices enrolling individuals under the respective programs, and

(C) to such other entities and in such a manner as will effectively inform individuals eligible for benefits under this section,

concerning the special benefits provided under this section.

(2) An individual may establish that the individual was entitled at a date to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act (as in effect before October 1, 1981) by providing—

(A) documentation relating to the status under which the individual was provided care in (or under arrangements with) a Public Health Service facility on that date,

(B) the individual's seamen's papers covering that date, or

(C) such other reasonable documentation as the Secretary may require.

* * * * * * *

SEC. 133.* * *

(c) [42 U.S.C. 1396b note] No provision of law limiting Federal financial participation with respect to erroneous payments made by States under a State plan approved under title XIX of the Social Security Act (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations), other than the limitations contained in section 1903 of such Act, shall be effective with respect to payments to States under such section 1903 for quarters beginning on or after October 1, 1982, unless such provision of law is enacted after the date of the date of the enactment of this Act and expressly provides that such limitation is in addition to or in lieu of the limitations contained in section 1903 of the Social Security Act.

* * * * * * *

SIX-MONTH MORATORIUM ON DEREGULATION OF SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

SEC. 135. [None assigned.] The Secretary of Health and Human Services may not promulgate any change in the regulations prescribed under—

(1) subpart K of part 405 of subchapter B (relating to medicare conditions of participation of skilled nursing facilities),

(2) so much of subpart S of part 405 of subchapter B (relating to certification procedure for providers) as relates to certification of skilled nursing facilities, and

(3) subparts C, D, and E of part 442 of subchapter C (relating to medicaid certification and requirements for skilled nursing and intermediate care facilities),

of chapter IV of title 42 of the Code of Federal Regulations until the first day of the seventh calendar month beginning after the date of the enactment of this Act unless ordered to do so by a court of competent jurisdiction.

* * * * * * *

Subtitle C—Utilization and Quality Control Peer Review

Sec. 141. [42 U.S.C. 1305 note] This subtitle may be cited as the "Peer Review Improvement Act of 1982".

* * * * * * *

Sec. 156. * * *

(e) [42 U.S.C. 603 note] The regulations currently in effect for fiscal year 1982 with respect to erroneous payments made by States under a State plan approved under part A of title IV of the Social Security Act (45 CFR 205.42) shall remain in effect with respect to erroneous payments made by States until new regulations reflecting the changes made by subsection (a) are promulgated and placed in effect.

* * * * * * *

EXCLUSION FROM INCOME

Sec. 159. [42 U.S.C. 602 note] Notwithstanding any other provision of law, payments which are made, under a statutorily established State program, to meet certain needs of children receiving aid under the State's plan approved under part A of title IV of the Social Security Act, if—

(1) the payments are made to such children by the State agency administering such plan, but are made without Federal financial participation (under section 403(a) of such Act or otherwise), and

(2) the State program has been continuously in effect since before January 1, 1979,

shall be excluded from the income of such children and their families for purposes of section 402(a)(17) of such Act, and for all the other purposes of such part A and of such plan, effective on the date of the enactment of this Act.

* * * * * * *

DELAYED EFFECTIVE DATE IN CASES REQUIRING CONFORMING STATE LEGISLATION

Sec. 161. [42 U.S.C. 602 note] In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part A of title IV of the Social Security Act to the requirements imposed by any amendment made by this subtitle, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

* * * * * * *

DELAYED EFFECTIVE DATE IN CASES REQUIRING STATE LEGISLATION

Sec. 176. [42 U.S.C. 654 note] In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this subtitle, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

* * * * * * *

SEC. 191. * * *

(b)(1) [26 U.S.C. 3304 note] Except as provided in paragraph (2), the amendments made by this section shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after October 1, 1983.

(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to provide for rounding down of unemployment compensation amounts, the amendment made by this section shall apply in the case of compensation paid to individuals during eligibility periods which begin on or after October 1, 1983, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

* * * * * * *

SHORT-TIME COMPENSATION

SEC. 194. (a) [26 U.S.C. 3304 note] It is the purpose of this section to assist States which provide partial unemployment benefits to individuals whose workweeks are reduced pursuant to an employer plan under which such reductions are made in lieu of temporary layoffs.

(b) [26 U.S.C. 3304 note] (1) The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs, and shall provide technical assistance to States to assist in developing, enacting, and implementing such short-time compensation program.

(2) The Secretary shall conduct a study or studies for purposes of evaluating the operation, costs, effect on the State insured rate of unemployment, and other effects of State short-time compensation programs developed pursuant to this section.

(3) This section shall be a three-year experimental provision, and the provisions of this section regarding guidelines shall terminate 3 years following the date of the enactment of this Act.

(4) States are encouraged to experiment in carrying out the purpose and intent of this section. However, to assure minimum uniformity, States are encouraged to consider requiring the provisions contained in subsections (c) and (d).

(c) [26 U.S.C. 3304 note] For purposes of this section, the term "short-time compensation program" means a program under which—

(1) individuals whose workweeks have been reduced pursuant to a qualified employer plan by at least 10 per centum will be eligible for unemployment compensation;

(2) the amount of unemployment compensation payable to any such individual shall be a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

(3) eligible employees may be eligible for short-time compensation or regular unemployment compensation, as needed; except that no employee shall be eligible for more than the maximum entitlement during any benefit year to which he or she would have been entitled for total unemployment, and no employee shall be eligible for short-time compensation for more than twenty-six weeks in any twelve-month period; and

(4) eligible employees will not be expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but shall be available for their normal workweek.

(d) [26 U.S.C. 3304 note] For purposes of subsection (c), the term "qualified employer plan" means a plan of an employer or of an employers' association which association is party to a collective bargaining agreement (hereinafter referred to as "employers' association") under which there is a reduction in the number of hours worked by employees rather than temporary layoffs if—

(1) the employer's or employers' association's short-time compensation plan is approved by the State agency;

(2) the employer or employers' association certifies to the State agency that the aggregate reduction in work hours pursuant to such plan is in lieu of temporary layoffs which would have affected at least 10 per centum of the employees in the unit or units to which the plan would apply and which would have resulted in an equivalent reduction of work hours;

(3) during the previous four months the work force in the affected unit or units has not been reduced by temporary layoffs of more than 10 per centum;

(4) the employer continues to provide health benefits, and retirement benefits under defined benefit pension plans (as defined in section 3(35) of the Employee Retirement Income Security Act of 1974, to employees whose workweek is reduced under such plan as though their workweek had not been reduced; and

(5) in the case of employees represented by an exclusive bargaining representative, that representative has consented to the plan.

The State agency shall review at least annually any qualified employer plan put into effect to assure that it continues to meet the requirements of this subsection and of any applicable State law.

(e) [26 U.S.C. 3304 note] Short-time compensation shall be charged in a manner consistent with the State law.

(f) [26 U.S.C. 3304 note] For purposes of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(g) [26 U.S.C. 3304 note] (1) The Secretary shall conduct a study or studies of State short-time compensation programs consulting with employee and employer representatives in developing criteria and guidelines to measure the following factors:

(A) the impact of the program upon the unemployment trust fund, and a comparison with the estimated impact on the fund of layoffs which would have occurred but for the existence of the program;

(B) the extent to which the program has protected and preserved the jobs of workers, with special emphasis on newly hired employees, minorities, and women;

(C) the extent to which layoffs occur in the unit subsequent to initiation of the program and the impact of the program upon the entitlement to unemployment compensation of the employees;

(D) where feasible, the effect of varying methods of administration;

(E) the effect of short-time compensation on employers' State unemployment tax rates, including both users and nonusers of short-time compensation, on a State-by-State basis;

(F) the effect of various State laws and practices under those laws on the retirement and health benefits of employees who are on short-time compensation programs;

(G) a comparison of costs and benefits to employees, employers, and communities from use of short-time compensation and layoffs;

(H) the cost of administration of the short-time compensation program; and

(I) such other factors as may be appropriate.

(2) Not later than October 1, 1985, the Secretary shall submit to the Congress and to the President a final report on the implementation of this section. Such report shall contain an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary deems advisable, including recommendations as to necessary changes in the statistical practices of the Department of Labor.

* * * * * * *

SEC. 278. * * *

(d) [42 U.S.C. 426 note] TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.

(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1) of this subsection,

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

* * * * * * *

TITLE VI—FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

Subtitle A—Extension of Benefits[13]

SHORT TITLE

SEC. 601. [26 U.S.C. 3304 note] This subtitle may be cited as the "Federal Supplemental Compensation Act of 1982".

FEDERAL-STATE AGREEMENTS

SEC. 602. [26 U.S.C. 3304 note] (a) Any State which desires to do so may enter into and participate in an agreement with the Secretary of Labor (hereinafter in this title referred to as the "Secretary") under this subtitle. Any State which is a party to an agreement under this subtitle may, upon providing thirty days' written notice to the Secretary, terminate such agreement.

(b) Any such agreement shall provide that the State agency of the State will make payments of Federal supplemental compensation—

(1) to individiuals[14] who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and is not paid or entitled to be paid any additional compensation under any such State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada;

(2) for any week of unemployment which begins in the individual's period of eligibility,

except that no payment of Federal supplemental compensation shall be made to any individual for any week of unemployment which begins more than two years after the end of the benefit year for which he exhausted his rights to regular compensation.

(c) For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted his rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(B) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) For purposes of any agreement under this subtitle—

(1) the amount of the Federal supplemental compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for Federal supplemental compensation and the payment thereof; except where inconsistent with the provisions of this subtitle or with the regulations of the Secretary promulgated to carry out this subtitle; and

(3) the maximum amount of Federal supplemental compensation payable to any individual for whom an account is established under subsection (e) shall not exceed the lesser of (A) the amount established in such account for such

---

[13] See P.L. 97-424, "Surface Transportation Assistance Act of 1982", §544(c), with respect to certain modifications in agreements with the States under §602 of the "Federal Supplemental Compensation Act of 1982"; Vol. II, p. 686.

See P.L. 98-13, "Federal Supplemental Compensation Act of 1982—Prevention of Temporary Termination", with respect to weeks beginning after March 31, 1983; Vol. II, p. 690.

See P.L. 98-21, "Social Security Amendments of 1983", §503, with respect to the effective date of certain changes made by that law and with respect to certain modifications in agreements with the States under §602 of the "Federal Supplemental Compensation Act of 1982"; Vol. II, p. 697.

See P.L. 98-92, "Federal Supplemental Compensation Act of 1982, Amendment", §1(c), with respect to an account established before the week beginning June 5, 1983, and §1(d), with respect to an individual who exhausted his rights to Federal supplemental compensation before the first week beginning after September 2, 1983; Vol. II, p. 701.

See P.L. 98-135, "Federal Supplemental Compensation Amendments of 1983", §103(b), with respect to an individual who exhausted his rights to Federal supplemental compensation before the first week beginning after October 18, 1983; §103(c), with respect to certain modifications in agreements with the States under §602 of the "Federal Supplemental Compensation Act of 1982"; and §103(d), with respect to determining whether any period is in effect during weeks beginning after October 18, 1983; Vol. II, p. 703.

[14] As in original. Should be "individuals".

individual, or (B) in the case of an individual filing a claim under the interstate benefit payment plan for Federal supplemental compensation, the amount which would have been established in such account if the amount established in such account were determined by reference to the applicable limit under subparagraph (A)(ii)[15] of subsection (e)(2) applicable in the State in which the individual is filing such interstate claim under the interstate benefit payment plan for the week in which he is filing such claim.[16]

Solely for purposes of paragraph (2), the amendment made by section 2404(a) of the Omnibus Budget Reconciliation Act of 1981 shall be deemed to be in effect for all weeks beginning on or after September 12, 1982.

(e)(1) Any agreement under this subtitle with a State shall provide that the State will establish, for each eligible individual who files an application for Federal supplemental compensation, a Federal supplemental compensation account with respect to such individual's benefit year.

(2)(A)(i) Except as provided in subparagraph (B), the amount established in such account shall be equal to the lesser of—

(I) 55 per centum of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

(II) the applicable limit times his average weekly benefit amount for his benefit year.

(ii) For purposes of clause (i)—

(I) in the case of an account from which Federal supplemental compensation was payable to an individual for a week beginning before October 19, 1983, the applicable limit shall be the applicable limit in effect in the State under this paragraph (as in effect on the day before the date of the enactment of the Federal Supplemental Compensation Amendments of 1983) for the last week beginning before October 19, 1983, or

(II) In the case of an account from which Federal supplemental compensation is first payable for a week beginning after October 18, 1983, the applicable limit shall be the applicable limit determined under the following table with respect to the first week for which Federal supplemental compensation is payable from such account:

In the case of weeks during a:	**The applicable limit is:**
6-percent period	14
5-percent period	12
4-percent period	10
Low-unemployment period	8.

(B) In the case of any account from which Federal supplemental compensation was first payable for a week which begins after March 31, 1983, and before October 19, 1983, the amount established in such account under subparagraph (A) shall be increased by the individual's additional entitlement. In no event shall such increase result in the individual's receiving more Federal supplemental compensation for weeks beginning after October 18, 1983, than the subparagraph (A) entitlement.

(C) For purposes of subparagraph (B) and this subparagraph—

(i) The term "additional entitlement" means the lesser of—

(I) 3/4 of the subparagraph (A) entitlement, or

(II) the individual's average weekly benefit amount for the benefit year multiplied by the applicable limit determined under clause (ii).

(ii) The applicable limit determined under this clause is—

(I) 5 if all of the amount in the individual's Federal supplemental compensation account (determined without regard to subparagraph (B)) is payable to the individual for weeks beginning before October 18, 1983, and

(II) in the case of an individual not described in subclause (I), 4 (2 if the State is in a 4-percent period or a low-unemployment period for the first week beginning after October 18, 1983).

(iii) The term "subparagraph (A) entitlement" means the amount which would have been established in the account if Federal supplemental compenstion were first payable from such account for the first week beginning after October 18, 1983.[17]

(3)(A) For purposes of this subsection, the terms "6-percent period", "5-percent period", "4-percent period", and "low-unemployment period", mean, with respect to any State, the period which—

---

[15] P.L. 98-135, §102(b), struck out "or (D)(ii)".

[16] P.L. 98-21, §502(c), amended paragraph (3) in its entirety.

[17] P.L. 98-135, §102(a), amended paragraph (2) in its entirety.

(i) begins with the third week after the first week for which the applicable trigger is on, and

(ii) ends with the second week after the first week for which the applicable trigger is off.

(B)(i) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is on for any week if—

(I) the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range, or

(II) the rate of insured unemployment in the State for the period consisting of the last week beginning in the second calendar quarter ending before the week for which the trigger determination is being made and all weeks preceding such last week which began on or after January 1, 1982, equals or exceeds 5.5 percent in the case of a 6-percent period (or, in the case of a 5-percent period, equals or exceeds 4.5 percent but is less than 5.5 percent).

Subclause (II) shall not apply in the case of a 4-percent period or low-unemployment period.

(ii) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is off for any week if subclause (I) of clause (i) is not satisfied (or in the case of a 6-percent period or a 5-percent period, both subclause (I) and (II) of clause (i) are not satisfied).

(iii) In the case of any 5-percent period, 4-percent period, or low-unemployment period, as the case may be, notwithstanding clauses (i) and (ii), the applicable trigger shall be off for any week if the applicable trigger for a period with a higher applicable limit is on for such week.

(C) For purposes of this paragraph, the applicable range is as follows:

In the case of a:	**The applicable range is:**
6-percent period	A rate equal to or exceeding 6 percent.
5-percent period	A rate equal to or exceeding 5 percent but less than 6 percent.
4-percent period	A rate equal to or exceeding 4 percent but less than 5 percent.
Low-unemployment period	A rate less than 4 percent.

(D)(i) No 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, which is in effect for the first week beginning after October 18, 1983, or any week thereafter, shall last for a period of less than 13 weeks beginning after October 18, 1983.

(ii) The applicable limit in any State shall not be reduced or increased by more than 2 during any 13-week period beginning with the week for which such a reduction (or increase) would otherwise take effect. The preceding sentence shall not apply to any increase (or decease) which takes effect for the first week beginning after October 18, 1983.

(E) For purposes of this subsection—

(i) The rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970; except that, for purposes of determining the rate of insured unemployment for the period described in subparagraph (B)(i)(II), the rate of insured unemployment shall be determined by reference to the average monthly covered employment under the State law for so much of such period as does not fall in the last 6 months thereof.

(ii) The amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act.[18]

(4)[19] The amount of Federal supplemental compensation payable to an eligible individual shall not exceed the amount in such individual's account established under this subsection.

(5)(A) Except as provided in subparagraph (B), the maximum amount of Federal supplemental compensation payable to an individual shall not be reduced by reason of any trade readjustment allowance to which the individual was entitled under the Trade Act of 1974.

(B) If an individual received any trade readjustment allowance under the Trade Act of 1974 in respect of any benefit year, the maximum amount of Federal supplemental compensation payable under this subtitle in respect of such benefit year shall be reduced (but not below zero) so that (to the extent possible by making such a reduction) the aggregate amount of—

---

[18] P.L. 98-21, §502(a), added paragraph (3).
P.L. 98-135, §102(a), amended paragraph (3) in its entirety.

[19] P.L. 98-21, §502(a), redesignated paragraph (3) as paragraph (4).

(i) regular compensation,

(ii) extended compensation,

(iii) trade readjustment allowances, and

(iv) Federal supplemental compensation,

payable in respect of such benefit year does not exceed the aggregate amount which would have been so payable had the individual not been entitled to any trade readjustment allowance.[20]

(f)(1) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning before whichever of the following is the later:

(A) the week following the week in which such agreement is entered into; or

(B) September 12, 1982.

(2)(A) Except as provided in subparagraph (B), no[21] Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after March 31, 1985.[22]

(B) In the case of any individual who is receiving Federal supplemental compensation for the week which includes March 31, 1985, such compensation shall continue to be payable to such individual in accordance with subsection (e) for any week thereafter, in a period of consecutive weeks for each of which he meets the eligibility requirements of this Act.[23]

(g) The payment of Federal supplemental compensation shall not be denied to any recipient (who submits documentation prescribed by the Secretary) for any week because the recipient is in training or attending an accredited educational institution on a substantially full-time basis, or because of the application of State law to any such recipient relating to the availability for work, the active search for work, or the refusal to accept work on account of such training or attendance, unless the State agency determines that such training or attendance will not improve the opportunities for employment of the recipient.[24]

PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF FEDERAL SUPPLEMENTAL COMPENSATION

SEC. 603. [26 U.S.C. 3304 note] (a) There shall be paid to each State which has entered into an agreement under this subtitle an amount equal to 100 per centum of the Federal supplemental compensation paid to individuals by the State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect to compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this subtitle or chapter 85 of title 5 of the United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this subtitle in respect of such compensation.

(c) Sums payable to any State by reason of such State's having an agreement under this subtitle shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subtitle for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

---

[20] P.L. 98-21, §505, added paragraph (5).

[21] P.L. 99-15, §1(a)(1), struck out "No" and substituted "(A) Except as provided in subparagraph (B), no".

[22] P.L. 98-21, §501(a), struck out "March 31, 1983" and substituted "September 30, 1983".

P.L. 98-21, §502(b)(1), inserted "; except that in the case of any individual who received such compensation for the week preceding the last week beginning after such date, such compensation shall be payable to such individual for weeks beginning after such date, but the total amount of such compensation payable for such weeks shall be limited to 50 percent of the total amount which would otherwise be payable for such weeks".

P.L. 98-118, §1(a), struck out "September 30, 1983" and substituted "October 18, 1983".

P.L. 98-135, §101(a), amended paragraph (2) in its entirety.

[23] P.L. 99-15, §1(a)(2), added subparagraph (B).

[24] P.L. 98-21, §504, added subsection (g).

FINANCING PROVISIONS

SEC. 604. [26 U.S.C. 3304 note] (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this subtitle.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, such sums as may be necessary to carry out the purposes of this subtitle. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

(c) There are hereby authorized to be appropriated from the general fund of the Treasury, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this subtitle.

DEFINITIONS

SEC. 605. [26 U.S.C. 3304 note] For purposes of this subtitle—

(1) the terms "compensation", "regular compensation", "extended compensation", "based period", "benefit year", "State", "State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term "period of eligibility" means, with respect to any individual, any week which begins on or after September 12, 1982, and begins before April 1, 1985[25]; except that an individual shall not have a period of eligibility unless—

(A) his benefit year ends on or after June 1, 1982, or

(B) such individual was entitled to extended compensation for a week which begins on or after June 1, 1982.

FRAUD AND OVERPAYMENTS

SEC. 606. [26 U.S.C. 3304 note] (a)(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal supplemental compensation under this subtitle to which he was not entitled, such individual—

(A) shall be ineligible for further Federal supplemental compensation under this subtitle in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) In the case of individuals who have received amounts of Federal supplemental compensation under this subtitle to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such Federal supplemental compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(i) the payment of such Federal Supplemental compensation was without fault on the part of any such individual, and

(ii) such repayment would be contrary to equity and good conscience.

(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any Federal supplemental compensation payable to such individual under this subtitle or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the three-year period after the date such individuals received the payment of the Federal supplemental compensation to which they were not entitled, except that no single deduction may exceed 50 per centum of the weekly benefit amount from which such deduction is made.

---

[25] P.L. 98-21, §501(b), struck out "April 1, 1983" and substituted "October 1, 1983".
P.L. 98-21, §502(b)(2), inserted "(except as otherwise provided in section 602(f)(2))".
P.L. 98-118, §1(b), struck out "October 1, 1983" and substituted "October 19, 1983".
P.L. 98-135, §101(b), struck out "October 19, 1983 (except as otherwise provided in section 602(f)(2))" and substituted "April 1, 1985".

(C) No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

[*Internal References.*—Social Security Act §1153(a)(1) and (2) cite the Peer Review Improvement Act of 1982 (Title I; Subtitle C of P.L. 97-248). The catchlines to titles III and XVIII, and §§202, 223, 226, 226A, title IV, Part A (at §401) and Part D (at §451), 905, title XVIII, Part A (at §1811), 1815, 1816, 1842, 1866, 1871, 1876, 1879, and 1886, and at §§402(a)(17)(B); 403(i)(4); 1814(i)(2)(C); 1816(e)(5); 1842(b)(7)(D)(iii); 1861(v)(2)(B), (dd)(1)(G) and (dd)(2)(A)(iii); 1862(c)(end); 1876(g)(2); and 1887(a)(2)(C) have footnotes referring to P.L. 97-248.]

P.L. 97-253, Approved September 8, 1982 (96 Stat. 763)
Omnibus Budget Reconciliation Act of 1982

* * * * * * *

TITLE III—CIVIL SERVICE PROGRAMS AND GOVERNMENT OPERATIONS

Subtitle A—Civil Service Programs

COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1983, 1984, AND 1985

SEC. 301. (a) [5 U.S.C. 8340 note] (1) Except as provided in paragraph (3), the cost-of-living increase under any Government retirement system in annuity or retired or retainer pay of any early retiree taking effect in each of fiscal years 1983, 1984, and 1985, shall be equal to one-half of the assumed increase in the price index for that year.

(2) For purposes of this subsection, an individual shall be considered to be an early retiree if—

(A) the individual is under the age of 62 years as of the effective date of the cost-of-living increase involved (determined without regard to subsection (b));

(B) the annuity or retired or retainer pay of the individual is not computed in whole or in part based on any disability of the individual; and

(C) the annuity or retired or retainer pay of the individual is based upon the Government service of the individual.

(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code[1]) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

(A) one-half of the assumed increase in the price index for that year, plus

(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).[2]

(4) As used in this subsection—

(A) the term "price index" has the meaning given such term in section 8331(15) of title 5, United States Code; and

(B) the term "assumed increase in the price index" means—

(i) 6.6 percent, in the case of fiscal year 1983,

(ii) 7.2 percent, in the case of fiscal year 1984, and

---

[1] P.L. 98-270, §201(c)(1), struck out "on the basis of the calendar year ending in such year" and substituted "under section 8340(b) of title 5, United States Code".

[2] P.L. 98-396, 98 Stat. 1403, added this sentence.

(iii) 6.6 percent, in the case of fiscal year 1985.

(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

[(b) Repealed.[3]**]**

(c) **[**5 U.S.C. 8340 note**]** For purposes of this section, the term "cost-of-living increase under a Government retirement system" means any increase under—

(1) section 8340(b) of title 5, United States Code;

(2) section 826 of the Foreign Service Act of 1980;

(3) the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note);

(4) section 1401a(b) of title 10, United States Code; or

(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraphs.

[(d) Repealed.[4]**]**

* * * * * * *

RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

SEC. 307. **[**5 U.S.C. 8332 note**]** (a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act[5] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors' insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act) for service referred to in section 210(l) of such Act (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act) for each such year, and

(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act) and all self-employment income (within the meaning of section 211(b) of such Act) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1)) for each such year.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

(d) For purposes of this section, the term "determination month" means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor); or

(2) October 1982, in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

---

[3] P.L. 98-270, §201(c)(2), repealed subsection (b).

[4] P.L. 98-369, §2203, repealed subsection (d).

[5] September 8, 1982.

(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act §1106 has a footnote referring to P.L. 97-253.]

P.L. 97-276, Approved October 2, 1982 (96 Stat. 1186)
[Continuing Appropriations for Fiscal Year 1983][1]

* * * * * * *

SEC. 127. [42 U.S.C. 603 note] No reduction in the amount payable to any State under title IV of the Social Security Act with respect to any of the fiscal years 1977 through 1982 shall be made prior to the date on which this resolution expires on account of the provisions of section 403(h) of such Act.

* * * * * * *

SEC. 136. [None assigned.] Notwithstanding the decision of the United States Court of Appeals for the District of Columbia Circuit in Connecticut against Schweiker (No. 81-2090, July 27, 1982), section 306 of Public Law 96-272, or section 1132 of the Social Security Act, no payment shall be made, in or with respect to any fiscal year prior to fiscal year 1984, under this or any other Act, and no court shall award or enforce any payment (whether or not pursuant to such decision) from amounts appropriated by this or any other Act, to reimburse State or local expenditures made prior to October 1, 1978, under title I, IV, X, XIV, XVI, XIX, or XX of the Social Security Act, unless a request for reimbursement had been officially transmitted to the Federal Government by the State within one year after the fiscal year in which the expenditure occurred. After fiscal year 1983, any payment made to reimburse such State or local expenditures required to be reimbursed by a court decision in any case filed prior to September 30, 1982 shall be made in accordance with a schedule, to be established under the Social Security Act, over fiscal years 1984 through 1986.

* * * * * * *

SEC. 146. [None assigned.] Notwithstanding any other provision of law or this joint resolution, no change in the regulations subject to the moratorium required by section 135 of Public Law 97-248 shall be promulgated in final form until one hundred and twenty days after the expiration of the moratorium, during which period the Department of Health and Human Services shall seek public review and comment on any such proposed regulations and consult with the appropriate Committees of Congress.

* * * * * * *

SEC. 157-158. [None assigned.] Since the United States Congress established the Social Security system in 1935 to provide for the general welfare by establishing a system of Federal old-age benefits; and

Since Medicare was made part of the Social Security system by Act of Congress in 1965 to provide for the general welfare through a system of health benefits for the aged; and

Since medicare[2] is an insurance program in which working Americans contribute their Social Security payroll taxes and in which the elderly and disabled pay health insurance premiums in order to receive health benefits promised under this insurance plan; and

Since proposals to limit eligibility for Medicare health benefits to lower-income persons would profoundly alter the character of health insurance for the aged and disabled by removing the insurance principle from the Medicare program.

It is the sense of the Senate that the Congress should reject any proposal to impose a "means test" on eligibility for the Medicare program or benefits provided by the Medicare program.

* * * * * * *

---

[1] See P.L. 98-369, "Deficit Reduction Act of 1984", §2637, with respect to the payment schedule for reimbursement of certain back claims due the States; Vol. II, p. 721.

[2] As in original. Probably should be capitalized.

[*Internal References.*—The catchline to Social Security Act §1132 and P.L. 97-248, §135, have footnotes referring to P.L. 97-276.]

P.L. 97-300, Approved October 13, 1982 (96 Stat. 1322)

Job Training Partnership Act

* * * * * * *

STATEMENT OF PURPOSE

SEC. 2. [29 U.S.C. 1501] It is the purpose of this Act to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.

* * * * * * *

DEFINITIONS

SEC. 4. [29 U.S.C. 1503] For the purposes of this Act, the following definitions apply:

* * * * * * *

(21) The term "Secretary" means the Secretary of Labor.

BENEFITS

SEC. 142. [29 U.S.C. 1552] (a) Except as otherwise provided in this Act, the following provisions shall apply to all activities financed under this Act:

(1) A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.

(2) Individuals in on-the-job training shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

(3) Individuals employed in activities authorized under this Act shall be paid wages which shall not be less than the highest of (A) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, (B) the minimum wage under the applicable State or local minimum wage law, or (C) the prevailing rates of pay for individuals employed in similar occupations by the same employer.

(b) Allowances, earnings and payments to individuals participating in programs under this Act shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than programs under the Social Security Act.[1]

* * * * * * *

TRANSITION

SEC. 181. [29 U.S.C. 1591]

---

[1] House of Representatives Conference Report No. 97-889, dated September 28, 1982, p. 104, contains the following explanatory material which apparently relates to this section and Social Security Act §402(a)(8)(A)(v):

> The House amendment provides that stipends and allowances shall not be considered income for the purposes of determining eligibility for income transfer programs. No comparable Senate provision.
>
> The House amendment provides that earnings and allowances received by any youth participating in a program under the Act shall be disregarded in determining the eligibility of the youth's family for, and the amounts of benefits based on needs under, any Federal or federally assisted programs. No comparable Senate provision.
>
> The Senate recedes with an amendment to limit this provision relating to allowances to programs not under the Social Security Act. The Conference agreement also provides for a limited disregard of allowances provided under this Act under the AFDC program.
>
> The House amendment provides that all individuals participating in training shall be eligible to receive allowances, but not for a period to exceed 104 weeks in any 5-year period. No comparable Senate provision.
>
> The House recedes.

* * * * * * *

(i) The amendments made by sections 501 and 502 shall be effective October 1, 1983, but, the Secretary is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendments.

* * * * * * *

ALLOWANCES AND SUPPORT

Sec. 429. [29 U.S.C. 1699] (a) The Secretary shall provide enrollees with such personal, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. For the fiscal year ending Secretary 30, 1983, personal allowances shall be established at a rate not to exceed $65 per month during the first six months of an enrollee's participation in the program and not to exceed $110 per month thereafter, except that allowances in excess of $65 per month, but not exceeding $110 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified in this subsection in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

(b) The Secretary shall prescribe rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six months' service in the Job Corps.

(c) The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed, for the fiscal year ending September 30, 1983, $110 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance unless he has remained in the program at least 90 days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee. The Secretary is authorized, pursuant to rules or regulations, to reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(d) Such portion of the readjustment allowance as prescribed by the Secretary may be paid monthly during the period of service of the enrollee directly to a spouse or child of an enrollee, or to any other relative who draws substantial support from the enrollee, and any amount so paid shall be supplemented by the payment of an equal amount by the Secretary.

* * * * * * *

APPLICATION OF PROVISIONS OF FEDERAL LAW

Sec. 436. [29 U.S.C. 1706] (a) Except as otherwise provided in this subsection and in section 8143(a) of title 5, United States Code, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(2) For purposes of subchapter I of chapter 81 of title 5, United States Code (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except—

(A) the term "performance of duty" shall not include any act of an enrollee while absent from the assigned post of duty of such enrollee, except while participating in an activity (including an activity while on pass or during travel to or from such post or duty) authorized by or under the direction and supervision of the Job Corps;

(B) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS-2 employee, and sections[2] 8113 (a) and (b) of title 5, United States Code, shall apply to enrollees; and

(C) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(3) For purposes of the Federal tort claims provisions in title 28, United States Code, enrollees shall be considered employees of the Government.

* * * * * * *

EVALUATION

SEC. 454. [29 U.S.C. 1734] (a) The Secretary shall provide for the continuing evaluation of all programs, activities, and research and demonstration projects conducted pursuant to this Act, including their cost-effectiveness in achieving the purposes of this Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by age, sex, race, and national origin, and the adequacy of the mechanism for the delivery of services.

(b) The Secretary shall evaluate the effectiveness of programs authorized under this Act and part C of title IV of the Social Security Act with respect to the statutory goals, the performance standards established by the Secretary, and of increases in employment and earnings for participants, reduced income support costs, increased tax revenues, duration in training and employment situations, information on the post-enrollment labor market experience of program participants for at least a year following their termination from such programs, and comparable information on other employees or trainees of participating employers.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(8)(A)(v), 432(d)(1) and (f)(1), 433 (b)(2)(ii) and subsection (i), and 445(b)(1)(E) cite the Job Training Partnership Act.]

P.L. 97-362, Approved October 25, 1982 (96 Stat. 1726)

Miscellaneous Revenue Act of 1982

* * * * * * *

SEC. 202. COMPENSATION PAID TO EX-SERVICE MEMBERS CHARGED TO DEPARTMENT OF DEFENSE.

* * * * * * *

(b) EFFECTIVE DATE.—

* * * * * * *

(2) [5 U.S.C. 8509 note] TREATMENT OF PREVIOUSLY APPROPRIATED FUNDS.—All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which do not have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act §909 has a footnote referring to P.L. 97-362.]

---

[2] As in original. Should be "section".

P.L. 97-372, Approved December 20, 1982 (96 Stat. 1815)
[Shawnee Tribe of Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That notwithstanding any other provision of law, the funds appropriated on March 10, 1978, and August 22, 1979, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724A), in satisfaction of judgments granted to the Shawnee Tribe in dockets 64, 335, and 338 by the Indian Claims Commission and in docket 64-A by the United States Court of Claims, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

SEC. 2. [None assigned.] The Secretary of the Interior (hereinafter "Secretary") shall divide the funds among the Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants.

* * * * * * *

SEC. 6. [None assigned.] The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per eighteen shall be paid in accordance with such procedures, including the establishment of trust, as the Secretary determines to be necessary to protect the interests of such individuals.

SEC. 7. [None assigned.] None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for or the amount of assistance under the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-372.]

P.L. 97-376, Approved December 21, 1982 (96 Stat. 1828)
[Miami Tribes of Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That the funds appropriated on July 27, 1979, in satisfaction of the award in favor of the Miami Tribe of Oklahoma and the Miami Indians of Indiana in dockets 124-B and 254 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be used and distributed as herein provided.

* * * * * * *

SEC. 6. [None assigned.] The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per capita shares of legal incompetents and per capita shares of individuals under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect the interests of such individuals.

SEC. 7. [None assigned.] The funds distributed per capita or made available for programing under this Act shall not be subject to Federal or State income taxes nor shall such funds be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-376.]

P.L. 97-377, Approved December 21, 1982 (96 Stat. 1830)
[Further Continuing Appropriations for Fiscal Year 1983]

* * * * * * *

SEC. 156. [42 U.S.C. 402 note] (a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month; and

(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) by reason of having such child (or any other child of such member or former member) in her care.

(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 841)); and

(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841)), disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section.

(e)(1) Unless otherwise provided by law—

(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 411 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 411 of such title are increased above the rates as in effect immediately before such increase; and

(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 1731(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 1731(b) of such title are increased above the rates as in effect immediately before such increase.

(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

(g)(1) During each fiscal year[1] the Secretary of Defense shall transfer from time to time[2] to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the "Retired Pay, Defense" account of the Department of Defense.[3] During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses.[4] The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

(h) The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

(i) For the purposes of this section:

(1) The term "head of the agency" means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

(2) The terms "active military, naval, or air service" and "service-connected" have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act §202 has a footnote referring to P.L. 97-377.]

P.L. 97-402, Approved December 31, 1982 (96 Stat. 2020)
[Clallam Tribe of Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That, notwithstanding any other provision of law, the funds appropriated by the Act of May 4, 1977 (91 Stat. 61), in satisfaction of a judgment awarded in favor of the Clallam Tribe of Indians of the State of Washington in Indian Claims Commission docket numbered 134, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter referred to as the

---

[1] P.L. 98-94, §943(1), struck out "fiscal year 1983" and substituted "each fiscal year".
[2] P.L. 98-94, §943(2) struck out "from the 'Retired Pay, Defense' account of the Department of Defense".
[3] P.L. 98-94, §943(3), added this sentence.
[4] See footnote 3.

'Secretary'), in shares of one-third to each, as agreed to by the adoption of tribal resolutions cited in sections 2, 3, and 4 of this Act, among the Port Gamble Indian Community, the Lower Elwha Tribal Community, and the Jamestown Band of Clallam Indians.

* * * * * * *

SEC. 6. [None assigned.] None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(15), (State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-402.]

P.L. 97-403, Approved December 31, 1982 (96 Stat. 2022)
[Pembina Chippewa Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.), or any other law, regulation, or plan promulgated pursuant thereto, any funds appropriated in satisfaction of a judgment awarded to the Pembina Chippewa Indians in dockets numbered 113, 191, 221, and 246 of the Court of Claims shall be used and distributed as provided in this Act.

* * * * * * *

SEC. 8. [None assigned.] (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this Act shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this Act shall be paid, and the beneficiaries thereof determined under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or an individual under eighteen years of age is entitled under this Act shall be paid in accordance with such procedures (including the establishment of trusts) as the Secretary determines to be necessary to protect and preserve the interests of such individual.

SEC. 9. [None assigned.] None of the funds distributed per capita or made available under this Act for programs shall be subject to Federal, State, or local income taxes or be considered income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or benefits to any person or household participating in any Federal, State, or local programs.

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-403.]

P.L. 97-404, Approved December 31, 1982 (96 Stat.2026)
[Job Training Partnership Act, Amendments]

* * * * * * *

SEC. 6. [42 U.S.C. 602 note] The amendments made by this Act shall not be construed as affecting the term "original enacted" as applied to the Job Training Partnership Act in section 402(a)(8)(A)(v) of the Social Security Act as amended by section 503(a) of the Act.

* * * * * * *

[*Internal Reference.*—Social Security Act §402(a)(8)(A)(v) has a footnote referring to P.L. 97-404.]

P.L. 97-408, Approved January 3, 1983 (96 Stat. 2035)

[Blackfeet and Gros Ventre Tribes of Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That, notwithstanding any other provision of law, the funds appropriated in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), on January 23, 1981, in satisfaction of a judgment awarded to the Blackfeet and Gros Ventre Tribes of Indians and the Assiniboine Tribe of the Fort Belknap Indian Community in dockets numbered 250-A and 279-C of the United States Court of Claims; on July 16, 1981, in satisfaction of a judgment awarded to the Gros Ventre Tribe of Fort Belknap Indian Community in docket numbered 309-74 of the United States Court of Claims; and 26.8 per centum of the funds appropriated on June 30, 1981, in satisfaction of a judgment awarded to the Blackfeet and Gros Ventre Tribes in docket numbered 649-80L of the United States Court of Claims, less attorney fees and litigation expenses, but including all accrued interest and investment income, shall be distributed and used as herein provided.

* * * * * * *

SEC. 5. [None assigned.] The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per capita shares of individuals under eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect and preserve the interests of such individuals.

SEC. 6. [None assigned.] None of the funds distributed per capita or held in trust under provisions of this Act shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

* * * * * * *

SEC. 8.

* * * * * * *

(d) [None assigned.] None of the funds distributed per capita or held in trust under the provisions of this section shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14) (State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-408.]

P.L. 97-414, Approved January 4, 1983 (96 Stat. 2049)

Orphan Drug Act

* * * * * * *

SEC. 6.

* * * * * * *

(b) [42 U.S.C. 255 note] The Secretary shall report the results of studies currently evaluating home and community based health services, and any recommendations for legislative action which might improve the provision of such services, to the Congress prior to January 1, 1985.

(c) [42 U.S.C. 255 note] The Secretary of Health and Human Services shall compile and analyze the results of significant studies carried out by any public or private entity, group, or individual, relating to current and alternative reimbursement methodologies for home health services. The Secretary shall make recommendations with respect to such reimbursement methodologies as they might be applied in health care programs funded in whole or in part by Federal funds, and report such recommendations to the Congress within 180 days after the date of the enactment of this Act.

(d) [42 U.S.C. 255 note] The Secretary of Health and Human Services, acting through the Inspector General of the Department of Health and Human Services, shall undertake a thorough investigation of—

(1) the methods available to stem fraud and abuse in the provision of home health services under medicare and medicaid; and

(2) the extent to which such methods are applied in stemming such fraud and abuse.

The Secretary shall report the results of the investigation to the Congress within 18 months after the date of the enactment of this Act.

(e) [42 U.S.C. 255 note] (1) The Secretary of Health and Human Services shall develop and carry out demonstration projects commencing no later than January 1, 1984, to test—

(A) methods for identifying patients at risk of institutionalization who could be treated more cost-effectively with home health services and other non-institutional health services; and

(B) alternative reimbursement methodologies for home health agencies in order to determine the most cost-effective and efficient way of providing home health services.

(2) Methods for identifying patients at risk of institutionalization to be tested by the Secretary under paragraph (1)(A) may include, but not be limited to, the identification of hospitalized medicare patients who are candidates for early discharge due to availability of home health services and individuals in the community who could avoid institutionalization with the availability of home health services.

(3) Reimbursement methodologies to be tested by the Secretary under paragraph (1)(B) may include but not be limited to fee schedules, prospective reimbursement, and capitation payments.

(4) The Secretary shall report to Congress his findings with regard to the demonstrations carried out under paragraph (1) no later than January 1, 1985.

(f) [42 U.S.C. 255 note] For purposes of this section, the term "home health services" has the meaning prescribed for the term by section 1861(m) of the Social Security Act.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act §1861(m) has a footnote referring to P.L. 97-414.]

P.L. 97-424, Approved January 6, 1983 (96 Stat. 2097)
Surface Transportation Assistance Act of 1982

* * * * * * *

Title V - Highway Revenue Act of 1982

* * * * * * *

SEC. 544. ADDITIONAL WEEKS OF FEDERAL SUPPLEMENTAL COMPENSATION.

* * * * * * *

(c) [26 U.S.C. 3304 note] The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Tax Equity and Fiscal Responsibility Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by this Act. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such three-week period.

EXCLUSION OF CERTAIN HOME ENERGY ASSISTANCE FROM INCOME UNDER SSI AND AFDC

SEC. 545.

* * * * * * *

(d) [42 U.S.C. 602 note] The Secretary of Health and Human Services shall submit a report to the Congress, prior to April 1, 1985, on the implementation and results of the provisions of sections 1612(b)(13) and 402(a)(36) of the Social Security Act, including any recommendations with respect to whether such provisions should be extended in the same or modified form or allowed to expire.

* * * * * * *

[*Internal Reference.*—P.L. 97-248, title VI (Vol. II, p. 670) has a footnote referring to P.L. 97-424.]

P.L. 97-436, Approved January 8, 1983 (96 Stat. 2283)

[Confederated Tribes of the Warm Springs Reservation]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That notwithstanding any provision of the Act approved October 19, 1973 (25 U.S.C. 1401 et seq.), any other law, and any regulation or plan promulgated pursuant to such Act or any other law, the funds appropriated by the Act approved January 3, 1974 (87 Stat. 1071), for the award to the Confederated Tribes of the Warm Springs Reservation in docket numbered 198 before the Indian Claims Commission, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed in accordance with section 2 of this Act.

SEC. 2. [None assigned.] The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall distribute the funds referred to in the first section of this Act to the individuals enrolled by the Secretary under section 3 of this Act on a per capita basis in the following manner:

(1) The per capita share of a living competent individual who has attained the age of eighteen shall be paid directly to such individual.

(2) The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. In the event an individual dies intestate without heirs, the per capita share of the individual shall escheat to the Confederated Tribes of the Warm Springs Reservation.

(3) The per capita share of an individual under the age of eighteen or an individual determined by the Secretary to be incompetent to handle his own affairs shall be (A) distributed in accordance with such procedures as the Secretary determines to be necessary to protect the interests of such individual, or (B) in the discretion of the Secretary, held in trust for the benefit of such individual.

* * * * * * *

SEC. 4. [None assigned.] (a) None of the funds distributed by the Secretary under section 2 of this Act (or held in trust by the Secretary pursuant to paragraph (3)(B) of such section) shall be subject to Federal or State income taxes.

(b)(1) Except as provided in paragraph (2), the availability or distribution of funds by the Secretary under section 2 of this Act may not be considered as income or resources or otherwise used as the basis for denying or reducing—

(A) any financial assistance or other benefit to which any individual enrolled as a member under section 3 of this Act, or the household of any such individual, would otherwise be entitled or for which such individual or household is otherwise eligible under the Social Security Act, or

(B) any other Federal financial assistance or other Federal benefit to which such individual or household is otherwise entitled or for which such individual or household is otherwise eligible.

(2) The restriction contained in paragraph (1) of this subsection on the consideration or use of such funds for the purpose of reducing or denying any financial assistance or benefit described in subparagraph (B) of such paragraph shall not apply to that portion of any per capita share distributed under section 2 of this Act which exceeds $2,000.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 97-436.]

P.L. 97-448, Approved January 12, 1983 (96 Stat. 2365)
Technical Corrections Act of 1982

* * * * * * *

SEC. 309.

* * * * * * *

(d) [42 U.S.C. 1320c note] In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 and part B of title XI of the Social Security Act as amended by such subtitle.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act title XI, Part B (at §1151) has a footnote referring to P.L. 97-448.]

P.L. 97-455, Approved January 12, 1983 (96 Stat. 2497)
[Temporary Payment of Disability Benefits]

* * * * * * *

SEC. 5. [42 U.S.C. 405 note] CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

* * * * * * *

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

* * * * * * *

(b) [None assigned.] REPORT BY SECRETARY.—The Secretary of Health and Human Services shall conduct a study of the provisions of title II of the Social Security Act which require an offset against spouses' and surviving spouses' benefits on account of public pensions, as added by section 334 of the Social Security Amendments of 1977 (taking into account the amendment made by subsection (a) of this section as well as the provisions of such section 334), and shall report to the Congress, no later than May 15, 1983, his recommendations for any permanent legislative changes in such provisions (or in the applicability of such provisions) which he may consider appropriate.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act §§202 and 205 have footnotes referring to P.L. 97-455.]

P.L. 98-4, Approved March 11, 1983 (97 Stat. 7)
Payment-in-Kind Tax Treatment Act of 1983

SECTION 1. [26 U.S.C. 61 note] SHORT TITLE.

This Act may be cited as the "Payment-in-Kind Tax Treatment Act of 1983".

SEC. 2. [26 U.S.C. 61 note] INCOME TAX TREATMENT OF AGRICULTURAL COMMODITIES RECEIVED UNDER A 1983 PAYMENT-IN-KIND PROGRAM.

(a) INCOME TAX DEFERRAL, ETC.—Except as otherwise provided in this Act, for purposes of the Internal Revenue Code of 1954—

(1) a qualified taxpayer shall not be treated as having realized income when he receives a commodity under a 1983 payment-in-kind program,

(2) such commodity shall be treated as if it were produced by such taxpayer, and

(3) the unadjusted basis of such commodity in the hands of such taxpayer shall be zero.

(b) EFFECTIVE DATE.—This section shall apply to taxable years ending after December 31, 1982, but only with respect to commodities received for the 1983 crop year.

SEC. 3. [26 U.S.C. 61 note] LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land diverted from the production of an agricultural commodity under a 1983 payment-in-kind program—

(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such land during such crop year.

(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

(1) section 2032A of the Internal Revenue Code of 1954 (relating to valuation of certain farm, etc., real property),

(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

(3) chapter 2 of such Code (relating to tax on self-employment income), and

(4) title II of the Social Security Act (relating to Federal old-age, survivors, and disability insurance benefits).

SEC. 4. [26 U.S.C. 61 note] ANTIABUSE RULES.

(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

(b) QUALIFIED ACQUISITION.—For purposes of this section, the term "qualified acquisition" means any acquisition—

(1) by reason of the death of a qualified transferor,

(2) by reason of a gift from a qualified transferor, or

(3) from a qualified transferor who is a member of the family of the person acquiring the land.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED TRANSFEROR.—The term "qualified transferor" means any person—

(A) who held the land on February 23, 1983, or

(B) who acquired the land after February 23, 1983, in a qualified acquisition.

(2) MEMBER OF FAMILY.—The term "member of the family" has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1954.

(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

SEC. 5. [26U.S.C. 61 note] DEFINITIONS AND SPECIAL RULES.

(a) GENERAL RULE.—For purposes of this Act—

(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term "1983 payment-in-kind program" means any program for the 1983 crop year—

(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

(i) the diversion of farm acreage from the production of an agricultural commodity, and

(ii) the devotion of such acreage to conservation uses, and

(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

(2) 1983 CROP YEAR.—The term "1983 crop year" means the crop year for any crop the harvesting or planting period for which occurs during 1983. The term "1984 crop year" means the crop year for wheat the planting and harvesting period for which occurs during 1984.[1]

(3) QUALIFIED TAXPAYER.—The term "qualified taxpayer" means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from the Commodity Credit Corporation.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act title II and §211(b) have footnotes referring to P.L. 98-4.]

P.L. 98-13, Approved March 29, 1983 (97 Stat. 54)
[Federal Supplemental Compensation Act
of 1982—Prevention of Temporary
Termination]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [26 U.S.C. 3304 note] That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 shall be applied as if the provisions contained in part A of title V of the conference report on the bill H.R. 1900 were enacted into law on the date of the enactment of this Act.

[*Internal Reference.*—P.L. 97-248, title VI (Vol. II, p. 670) has a footnote referring to P.L. 98-13.]

P.L. 98-21, Approved April 20, 1983 (97 Stat. 65)
Social Security Amendments of 1983

SEC. 101. * * *

(e) [42 U.S.C. 410 note] Nothing in this Act shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.

SEC. 102. * * *

(d) [26 U.S.C. 3121 note] The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1954 may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section apply.

(e)(1) [42 U.S.C. 414 note] If any individual—

---

[1] P.L. 98-369, §1061(a)(2), amended paragraph (2) in its entirety.

(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section, and

(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act) for all of the purposes of title II of such Act.

(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.

* * * * * * *

SEC. 111. * * *

(d) [42 U.S.C. 415 note] Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act, the "base quarter" (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a "cost-of-living computation quarter" within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a "cost-of-living computation quarter" under paragraph (2)(A) of such section) for all of the purposes of such Act as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).

* * * * * * *

SEC. 112. * * *

(f) [42 U.S.C. 415 note] Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the "OASDI fund ratio" with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act[1] on the first day of the year following that year.

* * * * * * *

SEC. 121. * * *

(e) [42 U.S.C. 401 note] TRANSFERS TO TRUST FUNDS.—

(1) IN GENERAL.—There are hereby appropriated to each pay or fund amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1954 which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) to payments from such payor fund.

(2) TRANSFERS.—The amounts appropriated by paragraph (1) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PAYOR FUND.—The term "payor fund" means any trust fund or account from which payments of social security benefits are made.

---

[1] P.L. 98-369, §2662(b), added "of such Act".

(B) SOCIAL SECURITY BENEFITS.—The term "social security benefits" has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1954.

(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

(B) the anticipated operation of this subsection during the next 5 years.

* * * * * * *

SEC. 123.

* * * * * * *

(b) * * *

(4) [42 U.S.C. 418 note] DEPOSITS IN SOCIAL SECURITY TRUST FUNDS.—For purposes of subsection (h) of section 218 of the Social Security Act (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1954 (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.

* * * * * * *

SEC. 125. [26 U.S.C. 3121 note] TREATMENT OF CERTAIN FACULTY PRACTICE PLANS.

(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1954 (relating to concurrent employment by 2 or more employers)—

(1) the following entities shall be deemed to be related corporations:

(A) a State university which employs health professionals as faculty members at a medical school, and

(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

(i) which employs faculty members of such medical school, and

(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983.

* * * * * * *

SEC. 131.

* * * * * * *

(d) * * *

(2) [42 U.S.C. 402 note] In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made.

* * * * * * *

SEC. 151.

* * * * * * *

(b) * * *

(3) [42 U.S.C. 429 note] (A) Within thirty days after the date of the enactment of this Act, the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act if the additional wages deemed to have been paid under section 229(a) of the Social Security Act prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1954) for purposes of the taxes imposed

by sections 3101 and 3111 of the Internal Revenue Code of 1954, and the amount of interest which would have been earned on such amounts if they had been so appropriated.

(B)(i) Within thirty days after the date of the enactment of this Act, the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.

SEC. 152.

* * * * * * *

(c) [42 U.S.C. 401 note] (1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust fund, in the month following the month in which this Act is enacted and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragaphs (3) and (4) of section 201(m) of the Social Security Act (as added by subsection (a) of this section) shall be applicable to such check.

(2) As used in paragraph (c), the term "unnegotiated benefit checks" means checks for benefits under title II of the Social Security Act which are issued prior to the twenty-fourth month following the month in which this Act is enacted, which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.

FLOAT PERIODS

SEC. 153. [42 U.S.C. 401 note] (a) The Secretary of Health and Human Services and the Secretary of the Treasury shall jointly undertake, as soon as possible after the date of the enactment of this Act, a thorough study with respect to the period of time (hereafter in this section referred to as the "float period") between the issuance of checks from the general fund of the Treasury in payment of monthly insurance benefits under title II of the Social Security Act and the transfer to the general fund from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, of the amounts necessary to compensate the general fund for the issuance of such checks. Each such Secretary shall consult the other regularly during the course of the study and shall, as appropriate, provide the other with such information and assistance as he may require.

(b) The study shall include—

(1) an investigation of the feasibility and desirability of maintaining the float periods which are allowed as of the date of the enactment of this section in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act, and of the general feasibility and desirability of making adjustments in such procedures with respect to float periods; and

(2) a separate investigation of the feasibility and desirability of providing, as a specific form of adjustment in such procedures with respect to float periods, for the transfer each day to the general fund of the Treasury from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, of amounts equal to the amounts of the checks referred to in subsection (a) which are paid by the Federal Reserve Banks on such day.

(c) In conducting the study required by subsection (a), the Secretaries shall consult, as appropriate, the Director of the Office of Management and Budget, and the Director shall provide the Secretaries with such information and assistance as they may require. The Secretaries shall also solicit the views of other appropriate officials and organizations.

(d)(1) Not later than six months after the date of the enactment of this Act, the Secretaries shall submit to the President and the Congress a report of the findings of the investigation required by subsection (b)(1), and the Secretary of the Treasury shall by regulation make such adjustments in the procedures governing the payment of monthly insurance benefits under title II of the Social Security Act with respect to float periods (other than adjustments in the form described in subsection (b)(2)) as may have been found in such investigation to be necessary or appropriate.

(2) Not later than twelve months after the date of the enactment of this Act, the Secretaries shall submit to the President and the Congress a report of the findings of the separate investigation required by subsection (b)(2), together with their recommendations with respect thereto; and, to the extent necessary or appropriate to carry out such recommendations, the Secretary of the Treasury shall by regulation make adjustments in the procedures with respect to float periods in the form described in such subsection.

Sec. 154.

* * * * * * *

(d) [42 U.S.C. 401 note] Notwithstanding sections 201(c)(2), 1817(b)(2), and 1841(b)(2) of the Social Security Act, the annual reports of the Boards of Trustees of the Trust Funds which are required in the calendar year 1983 under those sections may be filed at any time not later than forty-five days after the date of the enactment of this Act.

* * * * * * *

Sec. 201.

* * * * * * *

(d) [42 U.S.C. 416 note] The Secretary shall conduct a comprehensive study and analysis of the implications of the changes made by this section in retirement age in the case of those individuals (affected by such changes) who, because they are engaged in physically demanding employment or because they are unable to extend their working careers for health reasons, may not benefit from improvements in longevity. The Secretary shall submit to the Congress no later than January 1, 1986, a full report on the study and analysis. Such report shall include any recommendations for legislative changes, including recommendations with respect to the provision of protection against the risks associated with early retirement due to health considerations, which the Secretary finds necessary or desirable as a result of the findings contained in this study.

* * * * * * *

Sec. 305.

* * * * * * *

(e) [42 U.S.C. 428 note] The Secretary shall increase the amounts specified in section 228 of the Social Security Act, as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.

* * * * * * *

Sec. 309.

* * * * * * *

(q) * * *

(2) [42 U.S.C. 426 note] For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act, as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted, under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.

Sec. 310. [42 U.S.C. 402 note]

* * * * * * *

(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.

* * * * * * *

STUDY CONCERNING THE ESTABLISHMENT OF THE SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Sec. 338. [42 U.S.C. 902 note] (a) There is hereby established, under the authority of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a joint study panel to be known as the Joint Study Panel on the Social Security Administration (hereafter in this section referred to as the "Panel"). The duties of the Panel shall be to conduct the study provided for in subsection (c).

(b)(1) The Panel shall be composed of 3 members, appointed jointly by the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and such chairmen shall jointly select one member of the Panel to serve as chairman of the Panel. Members of the Panel shall be chosen, on the basis of their integrity, impartiality, and good judgment, from individuals who, as a result of their training, experience, and attainments, are widely recognized by professionals in the fields of government administration, social insurance, and labor relations as experts in those fields.

(2) Vacancies in the membership of the Panel shall not affect the power of the remaining members to perform the duties of the Panel and shall be filled in the same manner in which the original appointment was made.

(3) Each member of the Panel not otherwise in the employ of the United States Government shall receive the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which such member is actually engaged in the performance of the duties of the Panel. Each member of the Panel shall be allowed travel expenses in the same manner as any individual employed intermittently by the Federal Government is allowed travel expenses under section 5703 of title 5, United States Code.

(4) By agreement between the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, such Committees shall provide the Panel, on a reimbursible[2] basis, office space, clerical personnel, and such supplies and equipment as may be necessary for the Panel to carry out its duties under this section. Subject to such limitations as the chairmen of such Committees may jointly prescribe, the Panel may appoint such additional personnel as the Panel considers necessary and fix the compensation of such personnel as it considers appropriate at an annual rate which does not exceed the rate of basic pay then payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and may procure by contract the temporary or intermittent services of clerical personnel and experts or consultants, or organizations thereof.

(5) There are hereby authorized to be appropriated to the Panel, from amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the purposes of this section.

(6) The provisions of section 8344 of title 5, United States Code, shall not apply to service by an individual as a member of the Panel.[3]

(c)(1) The Panel shall undertake, as soon as possible after the date of the enactment of this Act, a thorough study with respect to the implementation of removing the Social Security Administration from the Department of Health and Human Services and establishing it as an independent the executive branch with its own independent administrative structure, including the possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate.

(2) The Panel in its study under paragraph (1) shall address, analyze, and report specifically on the following matters:

(A) the manner in which the transition to an independent agency would be conducted;

(B) the authorities which would have to be transferred or amended in such a transition;

(C) the program or programs which would be included within the jurisdiction of the new agency;

(D) the legal and other relationships of the Social Security Administration with other organizations which would be required as a result of establishing the Social Security Administration as an independent agency; and

---

[2] As in original. Should be "reimbursable".

[3] P.L. 98-369, §2662(h)(1), added paragraph (6).

(E) any other details which may be necessary for the development of appropriate legislation to establish the Social Security Administration as an independent agency.

(d) The Panel shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than April 1, 1984, a report of the findings of the study conducted under subsection (c), together with any recommendations the Panel considers appropriate. The Panel and all authority granted in this section shall expire thirty days after the date of the submission of its report under this section.

* * * * * * *

EARNINGS SHARING IMPLEMENTATION REPORT

SEC. 343. [42 U.S.C. 902 note] (a) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall develop, in consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation as described in subsection (b). The Secretary shall report such proposals to such committees not later than July 1, 1984. The report and proposals provided to such committees shall—

(1) take into account, discuss, and analyze the impact of earnings sharing on various categories of social security beneficiaries and include recommendations for the implementation of earnings sharing which may be necessary to provide adequate protection for particular classes of beneficiaries;

(2) include specific recommendations with respect to an appropriate and feasible time period or time periods for implementation of such proposals along with recommendations for any transition provisions which may be necessary or appropriate; and

(3) provide cost-impact analyses on each proposal presented.

(b) For the purposes of subsection (a), the term "earnings sharing" refers to proposals that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for social security benefit purposes.

(c) In preparing the report and proposals required in subsection (a), the Secretary shall include consideration and analysis of the earnings sharing proposals contained in (1) S. 3, 98th Congress, 1st Session, (2) H.R. 1513, 97th Congress, 1st Session, and (3) the earnings sharing option described in the report entitled "Social Security and the Changing Roles of Men and Women", submitted to the Congress pursuant to Public Law 95-216, the Social Security Amendments of 1977.

(d) In carrying out subsections (a), (b), and (c), the Secretary shall consult with the Director of the Congressional Budget Office. Not later than 30 days after the Secretary submits the report required in subsection (a), the Director of the Congressional Budget Office shall submit a report to the committees identified in such subsection on the methodologies, recommendations, and analyses used in the Secretary's report.

* * * * * * *

SEC. 345.

* * * * * * *

(c) [None assigned.] Within 90 days after the date of the enactment of this Act the Secretary of Health and Human Services shall report to the Congress on his plans for implementing the amendment made by this section.

* * * * * * *

NOTIFICATION REGARDING SSI

SEC. 405. [42 U.S.C. 1382 note] Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act who may be eligible for supplemental security income benefits under title XVI of such Act of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance.

* * * * * * *

EFFECTIVE DATE

SEC. 503. [26 U.S.C. 3304 note] (a) The amendments made by this part shall apply to weeks beginning after March 31, 1983.

(b) In the case of any eligible individual—

(1) to whom any Federal supplemental compensation was payable for any week beginning before April 1, 1983, and

(2) who exhausted his rights to such compensation (by reason of the payment of all the amount in his Federal supplemental compensation account) before the first week beginning after March 31, 1983,

such individual's eligibility for additional weeks of compensation by reason of the amendments made by this part shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before April 1, 1983 (and the period after such exhaustion and before April 1, 1983, shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982).

(c) The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by this part. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposed such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such 3-week period.

* * * * * * *

SEC. 521.

* * * * * * *

(b) [26 U.S.C. 3304 note] (1) Except as provided in paragraph (2), the amendments made by this section shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984.

(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

* * * * * * *

TREATMENT OF CERTAIN ORGANIZATIONS RETROACTIVELY DETERMINED TO BE DESCRIBED IN SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1954

SEC. 524. [26 U.S.C. 3303 note] If—

(1) an organization did not make an election to make payments (in lieu of contributions) as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 before April 1, 1972, because such organization, as of such date, was treated as an organization described in section 501(c)(4) of such Code,

(2) the Internal Revenue Service subsequently determined that such organization was described in section 501(c)(3) of such Code, and

(3) such organization made such an election before the earlier of—

(A) the date 18 months after such election was first available to it under the State law, or

(B) January 1, 1984,

then section 3303(f) of such Code shall be applied with respect to such organization as if it did not contain the requirement that the election be made before April 1, 1972, and by substituting "January 1, 1982" for "January 1, 1969".

* * * * * * *

SEC. 601. (a) * * *

(3) [42 U.S.C. 1395ww note] It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively

determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.

* * * * * * *

(g) [42 U.S.C. 1395ww note] In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act, the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.

SEC. 602.

* * * * * * *

(k) [42 U.S.C. 1395y note] (1)[4] The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.[5]

(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.[6]

* * * * * * *

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS

SEC. 603. (a) [42 U.S.C. 1395ww note] (1) The Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall study, develop, and report to the Congress within 18 months after the date of the enactment of this Act on the method and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts computed under section 1886(d) of the Social Security Act.

(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1989[7]) on the impact, of the payment methodology under section 1886(d) of the Social Security Act during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

(B) During fiscal year 1984, the Secretary shall begin the collection of data necessary to compute the amount of physician charges attributable, by diagnosis-related groups, to physicians' services furnished to inpatients of hospitals whose discharges are classified within those groups. The Secretary shall submit to Congress, not later than

---

[4] P.L. 99-272, §9112(a), inserted "(1)".

[5] P.L. 99-272, §9112(a), added paragraph (2).

[6] P.L. 99-272, §9112(a), added paragraph (3).

[7] P.L. 99-509, §9305(i)(1)(A), struck out "1987" and substituted "1989".

July 1, 1985, a report to Congress which includes[8] recommendations on the advisability and feasibility of providing for determining the amount of the payments for physicians' services furnished to hospital inpatients based on the DRG type classification of the discharges of those inpatients, and legislative recommendations thereon.

(C) In the annual report to Congress under subparagraph (A) for 1985, the Secretary shall include the results of studies on—

(i) the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates under paragraph (3) of section 1886(d) of the Social Security Act;

(ii) whether and the method under which hospitals, not paid based on amounts determined under such section, can be paid for inpatient hospital services on a prospective basis as under such section;

(iii) the appropriateness of the factors used under paragraph (5)(A) of such section to compensate hospitals for the additional expenses of outlier cases, and the application of severity of illness, intensity of care, or other modifications to the diagnosis-related groups, and the advisability and feasibility of providing for such modifications;

(iv) the feasibility and desirability of applying the payment methodology under such section to payment by all payors for inpatient hospital services; and

(v) the impact of such section on hospital admissions and the feasibility of making a volume adjustment in the DRG prospective payment rates or requiring preadmission certification in order to minimize the incentive to increase admissions.

Such report shall specifically include, with respect to the item described in clause (iv), consideration of the extent of cost-shifting to non-Federal payors and the impact of such cost-shifting on health insurance costs and premiums borne by employers and employees.

(D) In the annual report to Congress under subparagraph (A) for 1986, the Secretary shall include the results of a study examining the overall impact of State systems of hospital payment (either approved under section 1886(c) of the Social Security Act or under a waiver approved under section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972), particularly assessing such systems' impact not only on the medicare program but also on the medicaid program, on payments and premiums under private health insurance plans, and on tax expenditures.

(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.[9]

(3)(A) The Secretary shall complete a study and make legislative recommendations to the Congress with respect to an equitable method of reimbursing sole community hospitals which takes into account their unique vulnerability to substantial variations in occupancy.

(B) In addition, the Secretary shall examine ways to coordinate an information transfer between parts A and B of title XVIII of the Social Security Act, particularly with respect to those cases where a denial of coverage is made under part A of such title and no adjustment is made in the reimbursement to the admitting physician or physicians.

(C) The Secretary shall also report on the appropriate treatment of uncompensated care costs, and adjustments that might be appropriate for large teaching hospitals located in rural areas.

(D) The Secretary shall also report on the advisability of having hospitals make available information on the cost of care to patients financed by both public programs and private payors.

(E) The studies and reports described in this paragraph shall be completed and submitted not later than April 1, 1985.

(4) The Secretary shall complete a study and make recommendations to the Congress, before April 1, 1984, with respect to a method for including hospitals located outside of the fifty States and the District of Columbia under a prospective payment system.

---

[8] P.L. 98-369, §2317, struck out "include, in a report to Congress in 1985," and substituted "submit to Congress, not later than July 1, 1985, a report to Congress which includes".

[9] P.L. 99-509, §9305(i)(1)(B), added subparagraph (E).

* * * * * * *

(c) [None assigned.] The Secretary shall approve, with appropriate terms and conditions as defined by the Secretary, within 30 days after the date of enactment of this Act—

(1) the risk-sharing application of On Lok Senior Health Services (according to terms and conditions as specified by the Secretary), dated July 2, 1982, for waivers, pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, of certain requirements of title XVIII of the Social Security Act over a period of 36 months in order to carry out a long-term care demonstration project, and

(2) the application of the Department of Health Services, State of California, dated November 1, 1982, pursuant to section 1115 of the Social Security Act, for the waiver of certain requirements of title XIX of such Act over a period of 36 months in order to carry out a demonstration project for capitated reimbursement for comprehensive long-term care services involving On Lok Senior Health Services.

(d) [42 U.S.C. 1395b-1 note] The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.

SEC. 604. [42 U.S.C. 1395ww note]

* * * * * * *

(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act (as in effect before the date of the enactment of this Act) for items and services furnished before that period.

(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act (as amended by this title) no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

(3) Rules to implement the amendments made by this title[10] shall be established in accordance with the procedure described in this subsection.[11]

SEC. 605.

* * * * * * *

(b) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall, prior to December 31, 1983, complete a study and report to the Congress with respect to (1) the effect which the implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982 would have on hospital-based skilled nursing facilities, given the differences (if any) in the patient populations served by such facilities and by community-based skilled nursing facilities and (2) the impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities.[12]

* * * * * * *

[*Internal References.*—Social Security Act §215(a)(7)(E)(i) cites §101; §215(a)(7)(E)(ii) cites §102; §215(i)(4) cites §§111(a)(6), (b)(2) and 112; §§217(g)(1), (g)(1)(B), (g)(1)(end), 218(f), 1886(c)(4)(B), (e)(1)(A)(ii) and (e)(1)(B)(ii) cite the Social Security Amendments of 1983; §229(b) cites §§151(b)(3)(B)(i) and (b)(3)(B)(ii); §1618(e)(2) cites §111; §1634(b)(2)(C) cites §134; and §1845(b)(2)(F)(i) cites §603(b)(2). The catchlines to Social Security Act titles II, IV, VII, XI, Part A (at §1101), XVI (SSI) and XVIII, and §§201, 202, 202(a), (b), and (c), 228, 229, 1817, 1862 and 1886, and §§201(m)(4), 215(i)(1)(F)(ii), 226(e)(3),

---

[10] P.L. 98-369, §2315(f)(1), struck out "subsection (d) of section 1886 of the Social Security Act (as so amended)" and substituted "the amendments made by this title".

[11] See P.L. 98-369, "Deficit Reduction Act of 1984", §2315(f)(2), with respect to publication of the required regulations; Vol. II, p. 713.

[12] P.L. 98-369, §2319(e), provides as follows: "The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983.".

1817(b)(2), 1861(v)(1)(E), 1862(a)(14), 1866(a)(1)(H), 1886(d)(7)(B) and (d)(8)(B)(ii) have footnotes referring to P.L. 98-21.]

P.L. 98-64, Approved August 2, 1983 (97 Stat. 365)
[Per Capita Payments to Indians]

Be in enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 117a] That funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary or the tribe directly to the members involved or, if such members are minor or have been legally determined not competent to handle their own affairs, to a parent or guardian of such members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

SEC. 2. [25 U.S.C. 117b] (a) Funds distributed under this Act shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466)[1] , as amended.

(b) Nothing in this Act shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended, or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided,* That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in section 1 of this Act if all other provisions of the 1973 Act are met, including but not limited to, the protection of the interests of minors and incompetents in such funds.

(c) Nothing in this Act, except the provisions of subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

SEC. 3. [25 U.S.C. 117c] (a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to section 1 of this Act and, where approval is given under such regulations, the United States shall not be liable with respect to any distribution of funds by a tribe under this Act.

(b) Nothing in this Act shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-64.]

P.L. 98-92, Approved September 2, 1983 (97 Stat. 608)
[Supplemental Unemployment Benefits—
Temporary Emergency Food
Assistance Act of 1983]

SEC. 1.

* * * * * * *

(c) [26 U.S.C. 3304 note] (1) In the case of an account established before the week beginning June 5, 1983, the applicable limit under section 602(e)(2)(A)(ii) of the Federal Supplemental Compensation Act of 1982 shall in no event be less than the number of weeks applicable to such State for the week beginning March 27, 1983, under section 602(e)(2) of such Act (as in effect for such week) reduced by four.

(2) Paragraph (1) shall apply only to compensation for weeks of unemployment beginning on or after the date of the enactment of this Act.

(d) [26 U.S.C. 3304 note] In the case of any eligible individual who (without regard to the amendment made by subsection (a) or the provisions of subsection (c)) exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after the date of the enactment of this Act, such individual's eligibility for additional compensation by reason of the amendment made by subsection (a) or the provisions of subsection (c) for any week of unemployment shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after the date of the enactment of this Act.

---

[1] See P.L. 93-134, §7, Vol. II, p. 556.

* * * * * * *

[*Internal Reference.*—P.L. 97-248, Title VI, has a footnote referring to P.L. 98-92.]

P.L. 98-118, Approved October 11, 1983 (97 Stat. 803)

[Extension of "Federal Supplemental Compensation Act of 1982", P.L. 97-248, Title VI, Subtitle A]

* * * * * * *

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. [26 U.S.C. 3121 note] Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

* * * * * * *

[*Internal Reference.*—Social Security Act §209(end) has a footnote referring to P.L. 98-118.]

P.L. 98-123, Approved October 13, 1983 (97 Stat. 815)

[Red Lake Band of Chippewa Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated with respect to the judgment awarded the Red Lake Band of Chippewa Indians in docket numbered 15-72 of the United States Court of Claims (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, shall be distributed and used as follows:

(1) Eighty per centum of such funds shall be distributed by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") in the form of per capita payments (in sums as equal as possible) to all enrolled members of the Red Lake Band of Chippewa Indians who are living on the date of enactment of this Act.

(2) Twenty per centum of such funds, including any interest or income accrued thereon, shall be—

(A) held in trust and invested by the Secretary for the benefit of the members of the Red Lake Band of Chippewa Indians, and

(B) distributed from such trust, subject to the approval of the Secretary, to the governing body of such tribe for the purpose of making expenditures to meet common tribal needs or educational requirements.

SEC. 2. [None assigned.] (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this Act shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this Act shall be paid, and the beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or an individual under eighteen years of age is entitled under this Act shall be paid in accordance with such procedures (including the establishment of trusts) as the Secretary determines to be necessary to protect the interests of such individual.

Sec. 3. [None assigned.] None of the funds distributed under this Act shall be—

(1) subject to Federal, State, or local income taxes, or

(2) considered income or resources in determining either eligibility for, or the amount of assistance under, Federal, State, or local programs.

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-123.]

P.L. 98-124, Approved October 13, 1983 (97 Stat. 817)

[Assiniboine Tribe of Montana]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That, notwithstanding any other provision of law, the funds appropriated on September 30, 1981, in accordance with section 1302 of the Supplemental Appropriation Act (31 U.S.C. 724a), in satisfaction of an award in United States Court of Claims docket numbered 10-81L, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be divided on the basis of 42.5 percent of the award funds to the Assiniboine Tribe of the Fort Belknap Indian Community and 57.5 percent of the award funds to the Assiniboine Tribe of the Fort Peck Indian Reservation and utilized for the purposes herein provided.

* * * * * * *

Sec. 4. [None assigned.] The per capita shares of living competent adults shall be paid directly to them. Shares of deceased individual beneficiaries shall be determined and distributed in accordance with regulations of the Secretary.

Sec. 5. [None assigned.] None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita or family interest payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act or any Federal or federally assisted programs.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-124.]

P.L. 98-135, Approved October 24, 1983 (97 Stat. 857)

Federal Supplemental Compensation Amendments of 1983

* * * * * * *

Sec. 103. [26 U.S.C. 3304 note] EFFECTIVE DATES.

* * * * * * *

(b) Transitional Rule.—In the case of any eligible individual who exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after October 18, 1983, such individual's eligibility for additional weeks of compensation by reason of the amendments made by this title shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after October 18, 1983 (and the period after such exhaustion and before the beginning of such first week shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982).

(c) Modification of Agreements.—The Secretary of Labor shall, at the earliest practicable date, after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by this title. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period.

(d) NEW PERIODS BEGIN WITH FIRST WEEK AFTER OCTOBER 18, 1983.—For purposes of determining whether any 6-percent period, 5-percent period, 4-percent period, or low-unemployment period is in effect during weeks beginning after October 18, 1983, the amendments made by this title shall be treated as in effect during all periods before the first week beginning after October 18, 1983.

* * * * * * *

ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

SEC. 206. [26 U.S.C. 3304 note] (a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these individuals for unemployment compensation, and take action where appropriate.

(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act §1106 has a footnote referring to P.L. 98-135.]

P.L. 98-168, Approved November 29, 1983 (97 Stat. 1105)
[Amendments to Title 5, U.S.C.]

* * * * * * *

SEC. 201. [5 U.S.C. 8331 note] This title may be cited as the "Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983".

STATEMENT OF POLICY

SEC. 202. [5 U.S.C. 8331 note] It is the policy of the Government—

(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act) or January 1, 1987[1], whichever is earlier;

(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

---

[1] P.L. 99-190, §147(a), struck out in §201(1) "January" and substituted "May". Executed as if §147(a) amended §202(1) rather than 201(1).

P.L. 99-335, §305(a)(1), struck out "January 1, 1986" and substituted "January 1, 1987". Executed as if §305(a)(1) read "May 1, 1986" rather than "January 1, 1986".

(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act until a new Government retirement system covering such employees and officers is established;

(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987[2], with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

DEFINITIONS

Sec. 203. [5 U.S.C. 8331 note] (a) For the purposes of this title—

(1) the term "covered employee" means any individual whose service is covered service;

(2) the term "covered retirement system" means—

(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President;

(3) the term "covered service" means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67); and

(4) the term "new Government retirement system" means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987[3], and (B) takes effect on or before January 1, 1987[4].

(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

CONTRIBUTION ADJUSTMENTS

Sec. 204. [5 U.S.C. 8331 note] (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

(1) section 8334 of title 5, United States Code;

(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1987[5]. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987[6], as the case may be, and is not subject to a new Government retirement system.

---

[2] P.L. 99-190, §147(a), struck out "January" and substituted "May".
P.L. 99-335, §305(a)(1), struck out "May 1, 1986" and substituted "January 1, 1987".

[3] See footnote 2.

[4] See footnote 2.

[5] See footnote 2.

[6] See footnote 2.

(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

Sec. 205. [5 U.S.C. 8331 note] (a) For purposes of this section—

(1) the term "contribution deficiency", when used with respect to a covered retirement system, means the excess of—

(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

(2) the term "appropriate agency head" means—

(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.);

(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987[7] the appropriate agency head—

(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987[8] the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

Sec. 206. [5 U.S.C. 8331 note] (a) For the purposes of this section, the term "interim covered service" means covered service to which section 204(a) applies.

(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987[9], by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

---

[7] P.L. 99-190, §147(c), struck out "and 1986" and substituted "1986, and 1987".
P.L. 99-335, §305(a)(2), made the same amendment as P.L. 99-190, §147(c).

[8] See footnote 6.

(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act to the annuitant and is attributable to such service, as determined under subsection (g).

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1987[10], shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

---

[9] See footnote 2.

[10] P.L. 99-190, §147(b), struck out "January 1" and substituted "April 30".

P.L. 99-335, §305(a)(1), struck out "January 1, 1986" and substituted "January 1, 1987". Executed as if §305(a)(1) read "April 30, 1986" rather than "January 1, 1986".

(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act to an individual and is attributable to interim covered service shall be determined by—

(1) computing the amount of such benefits including credit for such service;

(2) computing the amount of such benefits, if any, without including credit for such service; and

(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

SEC. 207. [Repealed.[11]]

ELECTIONS BY CERTAIN COVERED EMPLOYEES

SEC. 208. [5 U.S.C. 8331 note] (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act beginning on or before December 31, 1983, may—

(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

(A) to terminate participation in such system, effective after December 31, 1983; or

(B) to remain under such system, as if the preceding sections of this Act and the amendments made by this Act had not been enacted; or

(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act and the amendments made by this Act; or

(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act and the amendments made by this Act.

* * * * * * *

[*Internal References.*—Social Security Act §201 has a footnote referring to P.L. 98-168. P.L. 99-190, §130(a) (Vol. II, p. 744) cites title II; and P.L. 99-335, §301(b)(1) (Vol. II, p. 765) cites §204 of P.L. 98-168.]

P.L. 98-181, Approved November 30, 1983 (97 Stat. 1153)

Supplemental Appropriations Act, 1984

* * * * * * *

CONSIDERATION OF UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

SEC. 221. [42 U.S.C. 602 note] Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part[1] A of title IV of the Social Security Act, any utility payment[2] made in lieu of any rental payment[3] by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937[4] or section 236 of the National Housing Act[5] shall be considered to be a shelter[6] payment.

---

[11] P.L. 99-335, §309, repealed §207.

[1] P.L. 98-479, §102(g)(3)(A), struck out "chapter" and substituted "part".

* * * * * * *

[*Internal Reference.*—Social Security Act §402(a)(7) has a footnote referring to P.L. 98-181.]

P.L. 98-369, Approved July 18, 1984 (98 Stat. 494)

Deficit Reduction Act of 1984

* * * * * * *

SEC. 102. * * *

(f) [26 U.S.C. 1256 note] EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section shall apply to positions established after the date of the enactment of this Act, in taxable years ending after such date.

(2) SPECIAL RULE FOR OPTIONS ON REGULATED FUTURES CONTRACTS.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1954), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

(3) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—Except as provided in subsection (g)(2), the amendments made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

(4) GAINS OR LOSSES FROM CERTAIN TERMINATIONS.—The amendment made by subsection (d)(9) shall apply as if included in the amendment made by section 505(a) of the Economic Recovery Tax Act of 1981, as amended by section 105(e) of the Technical Corrections Act of 1982.

(g) [26 U.S.C. 1256 note] ELECTIONS WITH RESPECT TO PROPERTY HELD ON OR BEFORE THE DATE OF THE ENACTMENT OF THIS ACT.—At the election of the taxpayer—

(1) the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act, effective for periods after such date in taxable years ending after such date, or

(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

* * * * * * *

SEC. 2303. * * *

(h) [42 U.S.C. 1395u note] The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.

(i) [42 U.S.C. 1395l note] (1) The Comptroller General shall report to the Congress on—

(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act and their impact on the volume and quality of clinical diagnostic laboratory tests;

(B) the potential impact of the adoption of a national fee schedule; and

(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

---

[2] P.L. 98-479, §102(g)(3)(B), struck out ", up to the utility allowance,".

[3] P.L. 98-479, §102(g)(3)(C), added "in lieu of any rental payment".

[4] P.L. 75-412.

[5] P.L. 73-479.

[6] P.L. 98-479, §102(g)(3)(D), struck out "rental" and substituted "shelter".

(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.

(j) [42 U.S.C. 1395l note] (1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

(2) The amendments made by subsection (g)(2) shall apply to payments for calendar quarters beginning on or after October 1, 1984.

(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983. Payment for such services shall be made under part B of title XVIII of the Social Security Act at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act or under the procedure described in section 1870(f)(1) of such Act) of the reasonable charge for such service. The deductible under section 1833(b) of such Act shall not apply to such tests if payment is made on the basis of such an assignment or procedure.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

SEC. 2304. [42 U.S.C. 1395l note] (a)(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

(i) weekly during the first month after implantation,

(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

(iii) monthly thereafter.

(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.

(b) [None assigned.] (1) The Secretary shall review, and report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, regarding the appropriateness of the amounts recognized as reasonable under part B of title XVIII of the Social Security Act for physicians[1] services associated with implantation or replacement of pacemaker devices and pacemaker leads. Such review shall take into account the amounts recognized as reasonable with respect to such procedures and the time and difficulty of such procedures at the current time in comparison with such amounts and the time and difficulty of such procedures at the time the amounts for such procedures were first established under such part.

(2) The Prospective Payment Assessment Commission, established under section 1886(e) of the Social Security Act, shall review and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the appropriateness of the payment amounts provided under section 1886(d) of such Act for inpatient hospital services associated with implantation or replacement of pacemaker devices and pacemaker leads. Such review shall take into account the time, difficulty, and costs associated with such procedures at the current time in comparison with the time, difficulty, and costs associated with such procedures upon which the payment rates for such procedures under part A of title XVIII of such Act are based.

(3) The Secretary and the Commission shall each complete the review described in paragraph (1) or (2), respectively, of this subsection and report on such review not later than March 1, 1985.

* * * * * * *

(d) [42 U.S.C. 1395y note] The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section prior to January 1, 1985, and the amendment made by subsection (c) shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations.

---

[1] As in original. Should be "physicians' ".

* * * * * * *

Sec. 2305. * * *

(f) [42 U.S.C. 1395l note] The amendments made by this section shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary.

* * * * * * *

Sec. 2306. * * *

(d) [None assigned.] (1) During the 15-month period beginning July 1, 1984, the Secretary of Health and Human Services shall monitor physicians' services in order to determine any changes in the per capita volume and mix of physicians' services provided to beneficiaries under part B of title XVIII of the Social Security Act, classified by participating and nonparticipating physicians, by assigned and nonassigned claims, by specialty, and by geographic area.

(2) A report on changes monitored pursuant to paragraph (1) shall be provided to Congress prior to July 1, 1985.

(3) Such report shall include recommendations in sufficient detail to serve as the basis for legislative action which Congress can take to assure that any burden of effectively constraining the growth of costs in the medicare part B program, which Congress intends to be borne by providers and physicians, is not transferred (in whole or in part) so as to become an additional burden on part B beneficiaries in the form of increased out-of-pocket costs, reduced services, or reduced access to needed physician care.

(e) [None assigned.] In addition to any funds otherwise provided for fiscal years 1984, 1985, and 1986[2] for payment to carriers under contracts entered into under section 1842 of the Social Security Act, there are transferred from the Federal Supplementary Medical Insurance Trust Fund, for payments to such carriers under such contracts to implement subsections (b)(4), (h), and (j) of section 1842 of the Social Security Act[3], not less than $8,000,000 for fiscal year 1984,[4] not less than $15,000,000 for fiscal year 1985, and not less than $18,000,000 for fiscal year 1986[5]. A significant proportion of such funds shall be used for the expansion of the participating physician and supplier program and for the development of professional relations staffs dedicated to addressing the billing and other problems of physicians and suppliers participating in that program.[6] Such funds for fiscal year 1986 are available for obligation until December 31, 1986.[7]

* * * * * * *

Sec. 2307. * * *

(c) [42 U.S.C. 1395u note] The Comptroller General shall conduct a study of the amounts billed for physician services and paid by carriers under section 1842(b)(7) of the Social Security Act to determine whether such payments have been made only where the physician satisfies the requirements of section 1842(b)(7)(A)(i) of such Act. The Comptroller General shall submit to the Committees on Ways and Means and on Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate a report on the results of such study not later than 18 months after the date of the enactment of this Act.

LESSER OF COST OR CHARGES

Sec. 2308. (a) [42 U.S.C. 1395f note] The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act, that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.

---

[2] P.L. 99-272, §9301(c)(1)(A), struck out "and 1985" and substituted ", 1985, and 1986"

[3] P.L. 99-272, §9301(c)(1)(B), struck out "the amendments made by this section" and substituted "subsections (b)(4), (h), and (j) of section 1842 of the Social Security Act".

[4] P.L. 99-272, §9301(c)(1)(C), struck out "and".

[5] P.L. 99-272, §9301(c)(1)(D), inserted ", and not less than $18,000,000 for fiscal year 1986".

[6] P.L. 99-272, §9301(c)(1)(E), added this sentence.

[7] See footnote 6.

(b) [42 U.S.C. 1395f note] (1) For purposes of applying the nominality test under sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.

* * * * * * *

STUDY OF MEDICARE PART B PAYMENTS

SEC. 2309. [42 U.S.C. 1395l note] (a)(1) The Director of the Office of Technology Assessment shall conduct a study of physician reimbursement under the medicare program and report to Congress on such study not later than December 31, 1985. The report shall include specific findings and recommendations on methods by which payment amounts and other program policies under part B of title XVIII of the Social Security Act may be modified—

(A) to eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures; and

(B) to increase incentives for physicians and other suppliers under such part to accept assignment for services covered under title XVIII of the Social Security Act.

The study shall also examine the influence of payment methodology and payment levels on the utilization of services.

(2) In carrying out the study under paragraph (1)(A), the Director shall take into account the relative time, complexity, investment in professional training, and overhead expenses necessary to the provision of various medical services and procedures, as well as the influence of the changes in technology.

(3) The report under paragraph (1)(A) shall include information on methodologies which could be applied in the development of fee schedules on a national or regional basis for payments under part B of title XVIII of the Social Security Act in a manner consistent with the findings of the study under this subsection.

(4) In preparing the report and recommendations, the Director shall consult with the Secretary of Health and Human Services and, as appropriate, with national organizations of physicians and other interested associations and individuals.

(b) In order to assist the Director in completing the study and to facilitate Congressional review, the Secretary of Health and Human Services shall compile a centralized medicare part B charge data base, utilizing information gathered by the medicare carriers for charges in 1983. Such data shall include information, by procedure, on—

(1) utilization,

(2) assignment rates of physicians and suppliers,

(3) actual, customary, and prevailing charges, and

(4) the differences in charges by physician specialty and locality.

Such information shall be provided to the Director of the Office of Technology Assessment.

(c) The Secretary shall review the report submitted under subsection (a)(1) and shall report to the Congress his comments on the report and recommendations for legislative amendments.

* * * * * * *

SEC. 2311. * * *

(d) [42 U.S.C. 1395ww note] (1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

(2) The amendment made by subsection (b) shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984.

(e) [None assigned.] The Secretary of Health and Human Services shall conduct a study of the distinction between urban and rural hospitals for purposes of the DRG payment provisions under section 1886(d) of the Social Security Act, and the effect which such distinction may have on rural hospitals in the case of those DRG's which have high fixed nonlabor components which do not vary significantly between urban and rural areas (such as those DRG's which involve expensive medical devices). The Secretary also shall conduct a study of the advisability and feasibility of varying by DRG the proportions of the labor and nonlabor components of the Federal payment amount instead of applying the average proportion of those components to all DRG's. The Secretary shall report the results of such studies to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives within six months after the date of the enactment of this Act.

(f) [None assigned.] The Secretary of Health and Human Services shall conduct a study of further refinements which may be appropriate in the inpatient hospital prospective payment provisions of title XVIII of the Social Security Act, in order to address the problems of differences in payment amounts to specific hospitals. The study shall include (but shall not be limited to) the degree of variation in inpatient hospital costs per discharge within each diagnosis-related group. The Secretary shall also present alternative methods of computing the amount of such payments. The study shall include a discussion of the relative merits of a method of payment under which a percentage of the payment amount (for discharges classified within a diagnosis-related group) could be determined on a regional basis. The Secretary shall report the result of the study, and any recommended changes in the prospective payment system, to the Congress prior to September 1, 1984.

* * * * * * *

Sec. 2312. * * *

(d) [None assigned.] The Secretary of Health and Human Services shall conduct a study of possible methods of reimbursement under title XVIII of the Social Security Act which would not discourage the use of certified registered nurse anesthetists by hospitals. The Secretary shall report the results of such study to the Congress as soon as is practicable.

* * * * * * *

Sec. 2314. * * *

(c)(1) [42 U.S.C. 1395x note] Clause (i) of section 1861(v)(1)(O) of the Social Security Act shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act.

(2) [42 U.S.C. 1395x note] Clause (iii) of section 1861(v)(1)(O) of such Act shall apply to costs incurred on or after the date of the enactment of this Act.

(3) [42 U.S.C. 1396a note] (A) Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to medical assistance furnished on or after October 1, 1984.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

* * * * * * *

Sec. 2315. * * *

(f) * * *

(2) [42 U.S.C. 1395ww note] Notwithstanding section 604(c) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984.

* * * * * * *

(h) [42 U.S.C. 1395ww note] The Secretary of Health and Human Services shall, prior to December 31, 1984—

(1) develop and publish a definition of "hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to

benefits under part A" of title XVIII of the Social Security Act for purposes of section 1886(d)(5)(C)(i) of that Act, and

(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PROSPECTIVE PAYMENT WAGE INDEX

SEC. 2316. [42 U.S.C. 1395ww note] (a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section, taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act, including any changes which the Secretary determines to be necessary to provide for an appropriate index.

(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.[a]

(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.

* * * * * * *

SEC. 2319. * * *

(d) [42 U.S.C. 1395x note] Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act prior to the date of the enactment of this Act, in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.

* * * * * * *

(f) [None assigned.] (1) The Secretary of Health and Human Services shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, prior to August 1, 1984, the proposals developed, as required under section 1135(c) of the Social Security Act, for prospective reimbursement of skilled nursing facilities.

(2) The Secretary of Health and Human Services shall submit to the Congress, prior to December 1, 1984, a report on the range of options for prospective payment of skilled nursing facilities under title XVIII of the Social Security Act. The report shall take into account case mix differences among skilled nursing facilities. The report shall analyze the feasibility of permitting inclusion of payments to hospital-based facilities within the DRG payment system under section 1886(d) of such Act.

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

SEC. 2320. [42 U.S.C. 1395b-1 note] (a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

---

[a] P.L. 99-272, §9103(a)(1), amended subsection (b) in its entirety.

(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section, that the State does not want paragraph (1) to apply to that project.

(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide[9] waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act are published.

(b) The project referred to in subsection (a) is the statewide[10] demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603), which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act.

* * * * * * *

Sec. 2323. * * *

(e) [42 U.S.C. 1395l note] The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act, and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.

* * * * * * *

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

Sec. 2325. [42 U.S.C. 1395y note] The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act, that payment will not be made under part B of title XVIII of such Act for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.

CONTRACTS FOR MEDICARE CLAIMS PROCESSING

Sec. 2326. (a) [42 U.S.C. 1395h note] During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)[11], the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act, and not more than two contracts under section 1842 of such Act, on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act[12] during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a)[13] of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).

* * * * * * *

(e) [None assigned.] (1) The Comptroller General shall conduct a study on—

(A) the ability of the Administrator of the Health Care Financing Administration to manage competitive bidding for agreements and contracts under sections 1816 and 1842 of the Social Security Act, and on the relative costs and efficiency of such competitive agreements and contracts as compared to current cost reimbursement for such agreements and contracts;

---

[9] As in original. Capitalization questionable.

[10] See footnote 9.

[11] P.L. 99-509, §9321(b)(1), struck out "of the fiscal years 1985 and 1986" and substituted "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)".

[12] P.L. 99-509, §9321(b)(2), inserted "or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act".

[13] P.L. 98-617, §3(a)(2), struck out "1816(a)(1)" and inserted "1816(a)".

(B) the need (if any) for eliminating the provider nomination procedure under section 1816(a) of such Act;

(C) the disparities (if any) in costs and quality of claims processing among the various entities performing claims processing pursuant to sections 1816 and 1842 of such Act;

(D) whether the standards of the Secretary of Health and Human Services for evaluating costs and performance of intermediaries and carriers are adequate and properly applied; and

(E) whether the Secretary's statutory authority is sufficient to deal with inefficient intermediaries and carriers either through the contract negotiation and budget review process or through the process for termination or nonrenewal of contracts.

(2) The Comptroller General shall submit a report on the results of such study to the Congress not later than May 1, 1986[14].

* * * * * * *

SEC. 2336. * * *

(c) * * *

(2) [42 U.S.C. 1395f note] The Secretary shall provide, not later than 90 days after the date of the enactment of this Act, for such revision of regulations as may be required to reflect the amendments made by subsection (b).

* * * * * * *

SEC. 2338. * * *

(d)(1) [42 U.S.C. 1395r note] The amendment made by subsection (a) shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act.

(2) [42 U.S.C. 1395p note] (A) The amendments made by subsections (b) and (c) shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

(B) For purposes of subparagraph (A), the term "first effective month" means the first month which begins more than 90 days after the date of the enactment of this Act.

* * * * * * *

SEC. 2343. * * *

(d) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain "core" services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

* * * * * * *

SEC. 2345. * * *

(b) [42 U.S.C. 1395bb note] The amendments made by this section shall become effective on the date of the enactment of this Act, and shall apply with respect to surveys released to the Secretary on, before, or after such date.

* * * * * * *

SEC. 2347. * * *

(b) [42 U.S.C. 1395cc note] Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983, the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act, shall become effective on November 15, 1984.

* * * * * * *

SEC. 2350. * * *

(a) * * *

(2) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the

---

[14] P.L. 99-272, §9315(a), struck out "12 months after the date of the enactment of this Act" and substituted "May 1, 1986".

amendments made by paragraph (1) to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.

* * * * * * *

(b) * * *

(3) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services may not approve the establishment of a stabilization fund by an eligible organization under section 1876(g)(5) of the Social Security Act for any contract period beginning later than four years after the date of the enactment of this Act.

(4) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services shall report to the Congress with respect to the use of stabilization funds by eligible organizations under section 1876(g)(5) of the Social Security Act, and shall assess the need for such funds. The report shall be submitted not later than 54 months after the month in which this Act is enacted.

* * * * * * *

SEC. 2351.* * *

(c) [42 U.S.C. 1395oo note] Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98-21)—

(1) the amendments made by section 602(h)(2)(A) of that Act shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

(2) the amendments made by section 602(h)(2)(B) of that Act shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act.

* * * * * * *

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

SEC. 2353. [42 U.S.C. 1395uu note] (a) The Secretary of Health and Human Services shall carry out a study and report to the Congress on the modifications required in section 1884 of the Social Security Act in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1886(d) of such Act, so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof). The report shall include recommendations as to how, and whether, implementation of section 1884 as modified may result in reductions in total hospital inpatient costs and total expenditures under title XVIII of the Social Security Act. The Secretary shall submit the report prior to March 31, 1985.

(b) During the period prior to March 31, 1985, and notwithstanding section 2101(c) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the Secretary shall not implement section 1884 of the Social Security Act.

* * * * * * *

SEC. 2354. * * *

(e) [42 U.S.C. 1320a-1 note] (1) Except as provided in paragraph (2), the amendments made by this section shall be effective on the date of the enactment of this Act; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

(2) The amendments made by paragraphs (1), (2), and (3) of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively.

WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

SEC. 2355. [None assigned.] (a) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall approve, with appropriate terms and conditions as defined by the Secretary, applications or protocols submitted for waivers described in subsection (c), and the evaluation of such protocols, in order to carry out such project. Such approval shall be effected not later than 30 days after the date on which the application or protocol for a waiver is submitted or not later than 30 days after the date of the enactment of this Act in the case of an application or protocol submitted before the date of the enactment of this Act.

(b) A project referred to in subsection (a) is a project—

(1) to demonstrate the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1—04 of the University Health Policy Consortium of Brandeis University;

(2) which provides for the integration of health and social services under the direct financial management of a provider of services;

(3) under which all medicare services will be provided by or under arrangements made by the organization at a fixed annual prepaid capitation rate for medicare of 100 percent of the adjusted average per capita cost;

(4) under which medicaid services will be provided at a rate approved by the Secretary;

(5) under which all payors will share risk for no more than two years, with the organization being at full risk in the third year;

(6) which is being provided funds under a grant provided by the Secretary of Health and Human Services; and

(7) with respect to which substantial private funds are being provided other than under the grant referred to in paragraph (5).

(c) The waivers referred to in subsection (a) are appropriate waivers of—

(1) certain requirements of title XVIII of the Social Security Act, pursuant to section 402(a) of the Social Security Amendments of 1967 (as amended by section 222 of the Social Security Amendments of 1972); and

(2) certain requirements of title XIX of the Social Security Act, pursuant to section 1115 of such Act.

(d)(1) The Secretary of Health and Human Services shall submit a preliminary report to the Congress on the status of the projects and waivers referred to in subsection (a) 45 days after the date of the enactment of this Act.

(2) The Secretary shall submit a final report to the Congress on the projects referred to in subsection (a) not later than 42 months after the date of the enactment of this Act.

* * * * * * *

SEC. 2361. * * *

(d) [42 U.S.C. 1396a note] (1) Except as provided in paragraph (2), the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

* * * * * * *

SEC. 2363. * * *

(c) [42 U.S.C. 1396b note] The amendments made by subsection (a) apply to calendar quarters beginning on or after the date of the enactment of this Act, except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date.

* * * * * * *

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

SEC. 2366. [42 U.S.C. 1396a note] The provisions of section 1902(a)(13) of the Social Security Act, in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.

* * * * * * *

SEC. 2367. * * *

(c) [42 U.S.C. 1396a note] (1) Except as provided in paragraph (2), the amendments made by this section shall become effective on October 1, 1984.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

* * * * * * *

SEC. 2373. * * *

(c) [42 U.S.C. 1396a note] (1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State during the moratorium period described in paragraph (2) by reason of such State's plan under title XIX of the Social Security Act being determined to be in violation of section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section.

(2) The moratorium period is the period beginning on the date of the enactment of this Act and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

* * * * * * *

SEC. 2601. * * *

(c) [42 U.S.C. 410 note] For purposes of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954, an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(d) [42 U.S.C. 410 note] (1) Any individual who—

(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act), and

(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii)[15] of the Social Security Act applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act, requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1954 as if the cessation of coverage under title 5 had not occurred.

(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such

---

[15] P.L. 99-514, §1883(a)(5)(A), struck out "210(a)(5)(g)(iii)" and substituted "210(a)(5)(G)(iii)".

subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United State Code.

(e) **[**42 U.S.C. 410 note**]** (1) For purposes of section 210(a)(5) of the Social Security Act (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1954 (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1954 by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, service described in paragraph (1) which is also "employment" for purposes of title II of the Social Security Act, shall be considered to be "covered service".

(f) **[**42 U.S.C. 410 note**]** Except as provided in subsection (d), the amendments made by subsections (a) and (b) (and the provisions of subsection (e)) shall be effective with respect to service performed after December 31, 1983.

* * * * * * *

SEC. 2603. * * *

(f) **[**26 U.S.C. 3121 note**]** In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes.

* * * * * * *

SEC. 2612. * * *

(b) **[**42 U.S.C. 1383 note**]** If an adjustment referred to in section 1631(b)(1) of the Social Security Act is in effect with respect to an individual or eligible spouse on the effective date of this subsection, and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act, as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).

* * * * * * *

SEC. 2615. * * *

(b) **[**42 U.S.C. 1320a-6 note**]** The amendment made by this section shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.

* * * * * * *

SEC. 2624. * * *

(b) [42 U.S.C. 602 note] (1) The amendments made by this section shall apply with respect to months beginning on or after October 1, 1984.

(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act as added by subsection (a) of this section) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible to be treated as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

(A) must make its application for such treatment no later than the end of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in the case of any such family the term "last month for which the family actually received such aid" as used in such section 402(a)(37) means the month before the month in which the family makes such application);

(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid to the time of its application under subparagraph (A), if section 402(a)(8)(A)(iv) of such Act applied; and

(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect.

* * * * * * *

PAYMENT SCHEDULE FOR REIMBURSEMENT OF CERTAIN BACK CLAIMS DUE THE STATES

SEC. 2637. [None assigned.] The payment schedule contemplated by section 136 of Public Law 97-276 for reimbursement of expenditures described in that section is hereby established as follows:

(1) For[16] expenditures identified in the decree entered by the United States District Court for the District of Columbia on July 21, 1983, in the case of State of Connecticut v. Heckler, No. 81-2237, and allowed by the Secretary of Health and Human Services prior to the date of the enactment of this Act, payment shall be made, by supplemental grant award or otherwise, within 30 days after the date of the enactment of this Act; and

(2) for any other expenditure described in such section 136 which was identified in such decree or in any other decree entered by a Federal court in a suit (with respect to such an expenditure) filed prior to September 30, 1982, payment shall be made, by supplemental grant award or otherwise, as soon as the expenditure or portion thereof involved is finally determined by the Secretary to be an allowable claim under the substantive provisions of the applicable title of the Social Security Act.

* * * * * * *

SEC. 2651. * * *

(l) * * *

(2) [42 U.S.C. 1320b-7 note] Except as otherwise specifically provided, the amendments made by subsections (a) through (i) shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.

* * * * * * *

EFFECTIVE DATES

SEC. 2664. [42 U.S.C. 401 note] (a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98-21).

---

[16] As in original. Possibly should be lower case.

(b) Except to the extent otherwise specifically provided in this subtitle, the amendments made by section 2663 shall be effective on the date of the enactment of this Act; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

* * * * * * *

[*Internal References.*—Social Security Act §209(e)(4) cites the Tax Reform Act of 1984 (Division A of P.L. 98-369) and §§1845(b)(2)(F)(ii) and (c)(2)(A) cite §2309 of the Deficit Reduction Act of 1984. The catchlines to SSAct titles XVIII and XIX, §§1135, 1814(a), 1816, 1835, 1842, 1861(v), 1862, 1871, 1884, 1886, and title XVIII, Part A (at §1811) and Part B (at §1831), and §§210(a)(5)(G) and (a)(8)(B), 1631(b)(1), 1814(b)(2), 1833(a)(2)(B)(ii) and (h)(6), 1835(a)(end), 1842(b)(7)(D)(iii), 1861(dd)(2)(A)(ii)(I), 1862(h)(4)(C), 1876(c)(3)(D) and (g)(5), 1886(a)(4), (d)(3)(E), (d)(5)(C)(i), (d)(8)(B)(ii), (e)(6)(J), and P.L. 98-21, §604(c)(3), have footnotes referring to P.L. 98-369.]

P.L. 98-378, Approved August 16, 1984 (98 Stat. 1305)

Child Support Enforcement Amendments of 1984

* * * * * * *

STATE COMMISSIONS ON CHILD SUPPORT

SEC. 15. [42 U.S.C.A. 654 note] (a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act for quarters beginning more than 30 days after the date of the enactment of this Act and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

(2) has established within the five years prior to the enactment of this Act a commission or council with substantially the same functions as the State Commissions provided for under this section, or

(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.

* * * * * * *

WISCONSIN CHILD SUPPORT INITIATIVE

SEC. 22. [42 U.S.C.A. 602 note] (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act (hereafter referred to in this section as "dependent children in single-parent families"), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;

(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a)(1) and (2) of such Act;

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

(iii) the amount so advanced under section 455(a) of such Act; and

(iv) the amount so advanced with respect to section 458(a) of such Act,

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the

Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a)(1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. [None assigned.] (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

* * * * * * *

[*Internal References.*—Social Security Act §455(e)(4) cites §5(a) and §458(b)(4) cites §5(c)(2)(A) of the Child Support Enforcement Amendments of 1984. Social Security Act title IV, Part A (at §401); and Part D (at §451) have footnotes referring to P.L. 98-378.]

P.L. 98-432, Approved September 28, 1984 (98 Stat. 1671)

Shoalwater Bay Indian Tribe—Dexter-by-the-Sea
Claim Settlement Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That this Act may be cited as the "Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act".

CONGRESSIONAL FINDINGS

SEC. 2. [None assigned.] The Congress finds that—

(1) there is pending before the United States District Court for the Western District of Washington at Tacoma a civil action numbered C83-167T entitled the "Shoalwater Bay Indian Tribe, a federally recognized Indian tribe against Joe Amador and Jean Amador, et al.", which involves claims to certain privately held lands within the Shoalwater Bay Indian Reservation in Tokeland, Washington, known as Dexter-by-the-Sea and First Addition Dexter-by-the-Sea;

(2) the owners of such lands derive their title from a patent issued by the United States Government to George N. Brown on August 1, 1872, certificate numbered 3763;

(3) the Shoalwater Bay Indian Reservation was established by Executive order of President Andrew Johnson on September 22, 1866, and is alleged to include the lands claimed by the Shoalwater Bay Indian Tribe in such civil action;

(4) in its patent to George N. Brown in 1872, the United States failed to exempt the lands claimed by the Shoalwater Bay Indian Tribe in such civil action from the Shoalwater Bay Indian Reservation established in 1866;

(5) since 1872, such lands have been the subject of disputes claiming dual chains of title in the United States as trustee for the Shoalwater Bay Indian Tribe and the patentee, George N. Brown and his successors in title, the defendants in the civil action;

(6) the pendency of the civil action has placed a cloud on the titles held by residents of Dexter-by-the-Sea and First Addition Dexter-by-the-Sea rendering their property essentially unmarketable; and

(7) a legislative resolution of such civil action is appropriate because the United States Government is responsible for the failure to except the land now known as Dexter-by-the-Sea and First Addition Dexter-by-the-Sea from the patent to George N. Brown in 1872.

* * * * * * *

SEC. 4. [None assigned.] (a)(1) If the requirements of subsection (b) of this section are met, the Secretary of the Treasury is authorized and directed in fiscal year 1985 to pay, out of funds in the Treasury of the United States not otherwise appropriated, $1,115,000 directly to the Shoalwater Bay Indian Tribe.

* * * * * * *

(c) None of the funds paid to the Shoalwater Bay Indian Tribe under subsection (a)(1) shall be used to make any per capita distribution to members of such tribe.

SEC. 5. [None assigned.] (a) The Shoalwater Bay Indian Tribe is authorized to utilize the funds paid to the tribe under provisions of this Act for any purpose authorized by ordinance or resolution of the tribe, including investment for economic development purposes.

* * * * * * *

(e) None of the funds or income therefrom distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-432.]

P.L. 98-460, Approved October 9, 1984 (98 Stat. 1794)

Social Security Disability Benefits Reform Act of 1984

* * * * * * *

SEC. 2. * * *

(d) [42 U.S.C.A. 423 note] (1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section not later than 180 days after the date of the enactment of this Act.

* * * * * * *

SEC. 3. * * *

(b) [42 U.S.C. 423 note] (1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

* * * * * * *

MORATORIUM MENTAL IMPAIRMENT REVIEWS

SEC. 5. [42 U.S.C. 421 note] (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act).

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

* * * * * * *

SEC. 6. * * *

(c) [42 U.S.C. 421 note] The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

(d) [42 U.S.C. 421 note] The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

(e) [42 U.S.C. 421 note] The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

* * * * * * *

SEC. 7. * * *

(c) [42 U.S.C. 423 note] (1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committeeon Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

* * * * * * *

SEC. 9. (a) * * *

(2) [42 U.S.C. 421 note] The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

* * * * * * *

[SEC. 12. Repealed.[1]]

QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 13. [None assigned.] The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

* * * * * * *

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. [42 U.S.C. 421 note] The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

* * * * * * *

SEPARABILITY

SEC. 18. [42 U.S.C. 1303 note] If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

* * * * * * *

[Internal References.—Social Security Act §§205(b)(2), 221(i)(3), (i)(4), and (j)(end), 223(d)(5)(A), 1614(a)(3)(G) and 1633(c) and the catchlines to Social Security Act §§205, 221, 1619 and title XVI (SSI) have footnotes referring to P.L. 98-460.]

P.L. 98-473, Approved October 12, 1984 (98 Stat. 1837)
[Continuing Appropriations for Fiscal Year 1985]

* * * * * * *

Title I

* * * * * * *

SEC. 102. [None assigned.] Unless otherwise provided for in this joint resolution or in the applicable appropriation Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1984, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriation Act by both Houses without any provisions for such project or activity, or (c) September 30, 1985, whichever first occurs.

---

[1] P.L. 99-272, §12102(g)(2), repealed §12, effective May 1, 1986.

* * * * * * *

SEC. 134.[1] [None Assigned.] Notwithstanding section 1814(i) of the Social Security Act and section 102 of this joint resolution, in the case of a hospice which—

(1) commenced operations prior to January 1, 1975;

(2) participated in a hospice demonstration project during fiscal year 1984; and

(3) is not certified as a hospice provider under title XVIII of the Social Security Act prior to September 24, 1984,

payment under such title for hospice care provided by such hospice on and after October 1, 1984, and prior to October 1, 1986, shall be made on the same basis as payment was made to such hospice under such demonstration project.

* * * * * * *

Title II

* * * * * * *

CHAPTER XII—PROCEDURAL AMENDMENTS

* * * * * * *

PART J—NOTICE ON SOCIAL SECURITY CHECKS

SEC. 1212. [42 U.S.C. 1302 note] (a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act, and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act.

* * * * * * *

Title IV

SEC. 401. [42 U.S.C. 1397b note] (a)(1) Notwithstanding any provision of title XX of the Social Security Act, the amount applicable under section 2003(c)(3) of such Act shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

(2) In addition to any other amounts appropriated under this resolution or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act.

(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to this section) for the purpose specified in paragraph

---

[1] This §134 is part of Title III—GENERAL PROVISIONS (98 Stat. 1972) and precedes the Title II containing §1212 (98 Stat. 2165).

(1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act.

(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act, not later than 3 months after the date of enactment of this section, the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

(i) the training, development, supervision, and evaluation of staff;

(ii) staff qualification requirements, by job classification;

(iii) staff-child ratios;

(iv) probation periods for new staff;

(v) employment history checks for staff; and

(vi) parent visitation; and

(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) requiring nation-wide criminal record checks

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

(d) The determination and promulgation required by section 2003(b) of the Social Security Act with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act.

* * * * * * *

[*Internal References.*—Social Security Act §§205(i) and 2003(c) and the catchline to §1814(i) have footnotes referring to P.L. 98-473.]

P.L. 98-500, Approved October 19, 1984 (98 Stat. 2317)
Old Age Assistance Claims Settlement Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 2301 note] That this Act may be cited as the "Old Age Assistance Claims Settlement Act".

DEFINITIONS

SEC. 2. [25 U.S.C. 2301] For purposes of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "unauthorized disbursement" means a disbursement made from the trust estate of a deceased Indian which was made by the Secretary to a State or a political subdivision of a State for the purpose of reimbursing the State or political subdivision for any old age assistance made to the deceased Indian before death in violation of Federal laws governing Indian trust property; and

(3) "trust estate" means that portion of the estate that consists of real or personal property, title to which is held by the United States for the benefit of the Indian or which may not be alienated without the consent of the Secretary.

PAYMENT OF CLAIMS

SEC. 3. [25 U.S.C. 2302] (a) The Secretary is authorized and directed to determine the portion of any unauthorized disbursement to which any individual under this Act is entitled, and to pay to such individual the amount which the Secretary determines such individual to be entitled. Any payment under this provision shall include interest at a rate of 5 per centum per annum, simple interest, from the date on which such disbursement was made from the trust estate of the deceased Indian.

* * * * * * *

AUTHORIZATIONS

SEC. 7. [25 U.S.C. 2306] (a) There are authorized to be appropriated for the purpose of carrying out the provisions of this Act $2,500,000 for each of the fiscal years 1986 and 1987, and such sums as may be necessary for any subsequent fiscal year. The amounts appropriated under the authority of this subsection shall remain available without fiscal year limitation for purposes of carrying out the provisions of this Act until all claims filed under this Act have been resolved.

(b) Funds necessary to pay the expenses of administering this Act shall be appropriated and expended under the authority of the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), popularly known as the Snyder Act.

TREATMENT OF FUNDS

SEC. 8. [25 U.S.C. 2307] Funds distributed under the provisions of this Act shall not be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-500.]

P.L. 98-507, Approved October 19, 1984 (98 Stat. 2339)

National Organ Transplant Act

* * * * * * *

TITLE I—TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION

ESTABLISHMENT AND DUTIES OF TASK FORCE

SEC. 101. [42 U.S.C. 273 note] (a) Not later than ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall establish a Task Force on Organ Transplantation (hereinafter in this title referred to as the "Task Force").

(b)(1) The Task Force shall—

(A) conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation,

(B) prepare the assessment described in paragraph (2) and the report described in paragraph (3), and

(C) advise the Secretary with respect to the development of regulations for grants under section 371 of the Public Health Service Act.

(2) The Task Force shall make an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients, including—

(A) an analysis of the safety, effectiveness, and costs (including cost-savings from improved success rates of transplantation) of different modalities of treatment;

(B) an analysis of the extent of insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector;

(C) an identification of problems that patients encounter in obtaining immunosuppressive medications; and

(D) an analysis of the comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

(3) The Task Force shall prepare a report which shall include—

(A) an assessment of public and private efforts to procure human organs for transplantation and an identification of factors that diminish the number of organs available for transplantation;

(B) an assessment of problems in coordinating the procurement of viable human organs including skin and bone;

(C) recommendations for the education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel, with respect to organ procurement;

(D) recommendations for the education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;

(E) recommendations for assuring equitable access by patients to organ transplantation and for assuring the equitable allocation of donated organs among transplant centers and among patients medically qualified for an organ transplant;

(F) an identification of barriers to the donation of organs to patients (with special emphasis upon pediatric patients), including as assessment of—

(i) barriers to the improved identification of organ donors and their families and organ recipients;

(ii) the number of potential organ donors and their geographical distribution;

(iii) current health care services provided for patients who need organ transplantation and organ procurement procedures, systems, and programs which affect such patients;

(iv) cultural factors affecting the family with respect to the donation of the organs; and

(v) ethical and economic issues relating to organ transplantation needed by chronically ill patients;

(G) recommendations for the conduct and coordination of continuing research concerning all aspects of the transplantation of organs;

(H) an analysis of the factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;

(I) an analysis of the manner in which organ transplantation technology is diffused amount and adopted by qualified medical centers, including a specification of the number and geographical distribution of qualified medical centers using such technology and an assessment of whether the number of centers using such technology is sufficient or excessive and of whether the public has sufficient access to medical procedures using such technology; and

(J) an assessment of the feasibility of establishing, and of the likely effectiveness of, a national registry of human organ donors.

MEMBERSHIP

SEC. 102. [42 U.S.C. 273 note] (a) The Task Force shall be composed of twenty-five members as follows:

(a) Twenty-one members shall be appointed by the Secretary of which:

(A) nine members shall be physicians or scientists who are eminent in the various medical and scientific specialties related to human organ transplantation;

(B) three members shall be individuals who are not physicians and who represent the field of human organ procurement;

(C) four members shall be individuals who are not physicians and who as a group have expertise in the fields of law, theology, ethics, health care financing, and the social and behavioral sciences;

(D) three members shall be individuals who are not physicians or scientists and who are members of the general public; and

(E) two members shall be individuals who represent private health insurers or self-insurers.

(2) The Surgeon General of the United States, the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Administrator of the Health Care Financing Administration shall be ex officio members.

(b) No individual who is a full-time officer or employee of the United States may be appointed under subsection (a)(1) to the Task Force. A vacancy in the Task Force shall be filled in the manner in which the original appointment was made. A vacancy in the Task Force shall not affect its powers.

* * * * * * *

SUPPORT FOR THE TASK FORCE

SEC. 103. [42 U.S.C. 273 note] (a) Upon request of the Task Force, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Task Force to assist the Task Force in carrying out its duties under this Act.

(b) The Secretary shall provide the Task Force with such administrative and support services as the Task Force may require to carry out its duties.

REPORT

SEC. 104. [42 U.S.C. 273 note] (a) The Task Force may transmit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives such interim reports as the Task Force considers appropriate.

(b) Not later than 7 months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives on its assessment under section 101(b)(2) of immunosuppressive medications used to prevent organ rejection.

(c) Not later than twelve months after the date on which the Task Force is established by the Secretary under section 101, the Task Force shall transmit a final report to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The final report of the Task Force shall include—

(1) a description of any findings and conclusions of the Task Force made pursuant to any examination conducted under section 101(b)(1)(A),

(2) the matters specified in section 101(b)(3), and

(3) such recommendations as the Task Force considers appropriate.

TERMINATION

SEC. 105. [42 U.S.C. 273 note] The Task Force shall terminate three months after the date on which the Task Force transmits the report required by section 104(c).

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act Title XVIII has a footnote referring to P.L. 98-507.]

P.L. 98-509, Approved October 19, 1984 (98 Stat. 2353)

Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984

* * * * * * *

SEC. 208. [None assigned.] By October 1, 1985, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat alcohol abuse and alcoholism. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat alcohol abuse and alcoholism;

(2) an analysis of the social and economic costs of alcoholism and alcohol abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for alcohol abuse and alcoholism, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from alcohol abuse and alcoholism; and

(C) to meet other costs resulting from alcohol abuse and alcoholism, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of alcoholism treatment and rehabilitation into the Nation's health care system;

(4) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(5) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of alcoholism and alcohol abuse and plans to meet those needs through specific modification of Federal, State, local, and private policies and regulations, including a specification of recommendations for legislation—

(A) to establish Federal programs and to provide Federal funds to encourage States to adopt and implement the model program described under paragraph (1); and

(B) to modify programs and activities conducted, and services provided, under—

(i) part B of title XIX of the Public Health Service Act;
(ii) titles XVIII and XIX of the Social Security Act;
(iii) chapter 89 of title 5, United States Code; and
(iv) sections 1079 and 1080 of title 10, United States Code,

in order to ensure appropriate cost-effective treatment and prevention of alcohol abuse and alcoholism; and

(6) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (5) as well as resource savings that can be anticipated from achieving the national objectives.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles XVIII and XIX have footnotes referring to P.L. 98-509.]

P.L. 98-527, Approved October 19, 1984 (98 Stat. 2662)

Developmental Disabilities Act of 1984

* * * * * * *

STUDY ON INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

SEC. 3. [None assigned.] (a) Within six months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report containing—

(1) recommendations for improving services for mentally retarded persons and persons with developmental disabilities provided under an approved State plan under title XIX of the Social Security Act so that the manner in which such services are provided will increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities;

(2) recommendations for services provided for mentally retarded persons and persons with developmental disabilities under waivers granted under section 1915(c) of the Social Security Act so that the manner in which such services are provided can be improved to increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities; and

(3) comments by each of the officials specified in clauses (2) through (4) of subsection (b) on the recommendations included in the report pursuant to paragraph (1), including comments concerning the effect of such recommendations, if implemented, on programs carried out by such officials.

(b) The Secretary, in preparing the report required by subsection (a), shall consult with—

(1) the Administrator of the Health Care Financing Administration of the Department of Health and Human Services (or the designee of the Administrator);

(2) the Commissioner of the Administration for Developmental Disabilities of the Department of Health and Human Services (or the designee of the Commissioner);

(3) the Chairman of the National Council on the Handicapped (or the designee of the Chairman); and

(4) the Assistant Secretary of Education for Special Education and Rehabilitative Services (or the designee of the Assistant Secretary).

[*Internal References.*—The catchline to Social Security Act title XIX and §1915(c) have footnotes referring to P.L. 98-527.]

P.L. 98-602, Approved October 30, 1984 (98 Stat. 3149)
[Wyandotte Tribe of Oklahoma]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WYANDOTTE TRIBE OF OKLAHOMA

ABROGATION OF PRIOR PLAN; REPEAL OF PRIOR DISTRIBUTION OF JUDGMENT FUNDS ACT

SEC. 101. [None assigned.] (a) Notwithstanding the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401, et seq.), or any other regulation or plan promulgated by the Secretary pursuant to such Act, the funds appropriated in satisfaction of the judgments awarded to the Wyandotte Tribe of Oklahoma in—

(1) docket numbered 139 before the Indian Claims Commission,
(2) docket numbered 141 before the United States Court of Claims, and
(3) dockets numbered 212 and 213 before the United States Claims Court,

(other than funds appropriated for the payment of attorney fees or litigation expenses) and any interest or investment income accrued or accruing (on or before the date of the allocation of funds pursuant to section 103(b)) on the amount of such judgments shall be used and distributed as provided in this title.

(b) The Act entitled "An Act to provide for the use and distribution of funds to the Wyandotte Tribe of Indians in docket 139 before the Indian Claims Commission and docket 141 before the United States Court of Claims, and for other purposes." and approved December 20, 1982, is hereby repealed.

* * * * * * *

MANNER OF PER CAPITA DISTRIBUTION; TREATMENT OF AMOUNTS PAID OR DISTRIBUTED

SEC. 106. [None assigned.] (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this title shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this title shall be paid, and the beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or a minor is entitled under this Act shall be paid in accordance with the requirements of section 3(b)(3) of the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401, et seq.).

(d) None of the funds distributed per capita under this title or made available under this title for any tribal program shall be—

(1) subject to Federal, State, or local income taxes, or
(2) considered as income or resources in determining either eligibility for, or the amount of assistance under—
    (A) the Social Security Act, or
    (B) in the case of any per capita share of $2,000 or less, any other Federal, State, or local programs.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-602.]

P.L. 98-604, Approved October 30, 1984 (98 Stat. 3161)

[Social Security Benefits—Increase]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [42 U.S.C. 415 note] That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act, the phrase "is 3 percent or more" appearing in section 215(i)(1)(B) of such Act shall be deemed to read "is greater than zero" (and the phrase "exceeds, by not less than 3 per centum, such Index" appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read "exceeds such Index").

(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a "general benefit increase".

SEC. 2. [None assigned.] The Office of the Actuary of the Social Security Administration shall conduct a study of improvements which might be made in the application and operation of the cost-of-living adjustment provisions in section 215(i) of the Social Security Act, giving particular attention to—

(1) the long-term effects of altogether eliminating the COLA trigger (the provision which requires that the CPI increase percentage (or the wage increase percentage) reach a specified level in order to trigger a cost-of-living adjustment in benefits);

(2) the long-term effects of reducing the level of the COLA trigger from 3 per centum to 1 per centum;

(3) long-term assumptions (explained in detail) concerning the frequency of instances in which the applicable increase percentage would be less than 3 per centum, the frequency of instances in which such percentage would be less than 1 per centum, and the frequency of deflationary periods in which there would be no increase in such percentage; and

(4) an analysis of the period currently being used to measure CPI and wage increases, and the long-term effects of changing such period so as to make it noncumulative or to use different calendar quarters

The Office of the Actuary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on or before September 1, 1985, a full and complete report of the study conducted under this section.

[*Internal Reference.*—The catchline to Social Security Act §215(i) has a footnote referring to P.L. 98-604.]

P.L. 99-107, Approved September 30, 1985 (99 Stat. 479)

Emergency Extension Act of 1985

* * * * * * *

SEC. 5. [42 U.S.C. 1395ww note] 45-DAY EXTENSION OF MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS.

(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS' SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act, shall be deemed to include the extension period.

(c) EXTENSION PERIOD DEFINED.—

(1) HOSPITAL PAYMENTS.—For purposes of subsection (a) the term "extension period" means the period beginning on October 1, 1985, and ending on April 30, 1986.[1]

---

[1] P.L. 99-509, §9307(d), provided that in applying this subsection, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1, and any reference to September 30 is deemed also to be a reference to September 27, effective September 30, 1985.

P.L. 99-272, §9101(a), amended subsection (c) in its entirety, effective March 15, 1986. Formerly, subsection (c) read as follows:

(2) Physician Payments.—For purposes of subsection (b), the term "extension period" means the period beginning on October 1, 1985, and ending on April 30, 1986.[2]

[*Internal References.*—Social Security Act §1842(j)(1) and the catchline to 1886 have footnotes referring to P.L. 99-107, §5.]

P.L. 99-130, Approved October 28, 1985 (99 Stat. 549)

[Mdewakanton and Wahpekute Eastern or Mississippi Sioux]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. [None assigned.] (a) That notwithstanding any other law, except as provided in subsection (b) of this section, the funds for awards to the Mdewakanton and Wahpekute Sioux appropriated on January 30, 1981 ($800,000), on October 15, 1982 ($591,058), and one-half of the funds appropriated on March 2, 1981 ($7,500), all in docket numbered 363 before the United States Court of Claims, and the funds appropriated on August 1, 1983 ($3,468,246.48), in docket numbered 363 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter the "Secretary") as follows:

	Percent
(1) Santee Sioux Tribe of Nebraska	58.69
(2) Flandreau Santee Sioux Tribe	15.84
(3) Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota to be divided on the basis of the respective members of each of the three communities, born on or prior to and living on the date of this Act	25.47

* * * * * * *

GENERAL PROVISION

Sec. 7. [None assigned.] (a) No person shall receive benefit payments as a member of more than one of the tribes under this Act. An individual who is a member of more than one of the tribes under this Act must designate the tribe from which he or she will receive per capita or dividend payments prior to receiving a per capita or dividend payment under this Act.

(b) The per capita shares or dividend payments of living, competent adults shall be paid directly to them. The shares or payments of deceased individuals, legal incompetents and minors, shall be determined and distributed under regulations prescribed by the Secretary pursuant to the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2512; 25 U.S.C. 1401 et seq.).

Sec. 8. [None Assigned.] Per capita and dividend payment distributions made pursuant to this Act shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2515; 25 U.S.C. 1407).

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 99-130.]

P.L. 99-146, Approved November 11, 1985 (99 Stat. 780)

[Chippewas of Lake Superior]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

---

"(c) EXTENSION PERIOD DEFINED.—For purposes of this section, the term 'extension period' means the period beginning on October 1, 1985, and ending on March 14, 1986*.".

* P.L. 99-155, §2(d), struck out "November 14, 1985" and substituted "December 14, 1985", effective November 14, 1985.

P.L. 99-181, §4, struck out "December 14, 1985" and substituted "December 18, 1985", effective December 13, 1985.

P.L. 99-189, §4, struck out "December 18, 1985" and substituted "December 19, 1985", effective December 18, 1985.

P.L. 99-201, §2, struck out "December 19, 1985" and substituted "March 14, 1986", effective December 19, 1985.

[2] P.L. 99-272, §9301(a), added paragraph (2), effective April 7, 1986.

SECTION 1. [None assigned.] Notwithstanding any other provision of law, the funds appropriated for the following Indian Claims Commission judgments awards (less attorney fees and litigation expense and plus all investment income and interest accrued) shall be used and distributed under this Act:

(1) Docket 18-S for the Chippewas of Lake Superior;

(2) Docket 18-U for the Chippewas of Lake Superior; and

(3) Dockets 18-C and 18-T funds apportioned to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

SEC. 2. [None assigned.] (a) DIVISION OF DOCKET 18-S.—The Secretary of the Interior shall divide the amount for Docket 18-S with two-thirds of the funds for the Chippewas of Lake Superior and one-third for the Chippewas of the Mississippi.

(b) The respective shares of the Chippewas of Lake Superior in Docket 18-S shall be divided as follows:

(1) Bad River Reservation, Wisconsin, * * *

(2) Lac du Flambeau Reservation, Wisconsin, * * *;

(3) Lac Courte Oreilles Reservation, Wisconsin, * * *;

(4) Sokaogon Chippewa Community (Mole Lake Band), Wisconsin, * * *;

(5) Red Cliff Reservation, Wisconsin, * * *;

(6) St. Croix Reservation, Wisconsin, * * *;

(7) Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands), Michigan, * * *;

(8) Fond du Lac Reservation, Minnesota, * * *;

(9) Grand Portage Reservation, Minnesota, * * *;

(10) Nett Lake Reservation (including Vermillion Lake and Deer Creek), Minnesota, * * *; and

(11) White Earth Reservation, Minnesota, * * *.

* * * * * * *

SEC. 6. [None assigned.] MISCELLANEOUS.—[1] The per capita shares under this Act of competent adults shall be paid directly to them. The per capita shares under this Act of deceased individual beneficiaries, legal incompetents, and minors shall be determined and distributed under regulations prescribed by the Secretary which are generally applicable to funds distributed under the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1401 et seq.).

(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

(c) Amounts remaining after per capita payments under this Act shall revert to the governing body of the respective tribal group for program purposes approved by the Secretary.

(d) No person shall be entitled to receive under this Act more than one per capita share from the same docket award.

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 99-146.]

P.L. 99-177, Approved December 12, 1985 (99 Stat. 1037)
[Public Debt Limit Increase]

* * * * * * *

Title II—Balanced Budget and Emergency Deficit Control Act of 1985

* * * * * * *

SEC. 252. [2 U.S.C. 902] PRESIDENTIAL ORDER.

(a) ISSUANCE OF INITIAL ORDER.—[1]

---

[1] As in original; "(a)" should be inserted.

[1] By P.L. 99-366, the Congress ratified this sequestration order effective on and after March 1, 1986.

(1) IN GENERAL.—On September 1 following the submission of a report by the Comptroller General under section 251(b) which identifies an amount greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991) by which the deficit for a fiscal year will exceed the maximum deficit amount for such fiscal year (or on February 1, 1986, in the case of the fiscal year 1986), the President, in strict accordance with the requirements of paragraph (3) and section 251(a)(3) and (4) and subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in sections 255, 256, and 257, shall eliminate the full amount of the deficit excess (as adjusted by the Comptroller General in such report in accordance with section 251(a)(3)(A)(ii), in the case of fiscal year 1986) by issuing an order that (notwithstanding the Impoundment Control Act of 1974)—

(A) modifies or suspends the operation of each provision of Federal law that would (but for such order) require an automatic spending increase to take effect during such fiscal year, in such a manner as to prevent such increase from taking effect, or reduce such increase, in accordance with such report; and

(B) eliminates the remainder of such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) by sequestering new budget authority, unobligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, and reducing obligation limitations, in accordance with such report—

(i) for funds provided in annual appropriation Acts, from each affected program, project, and activity (as set forth in the most recently enacted applicable appropriation Acts and accompanying committee reports for the program, project, or activity involved, including joint resolutions providing continuing appropriations and committee reports accompanying Acts referred to in such resolutions), applying the same reduction percentage as the percentage by which the account involved is reduced in the report submitted under section 251(b), or from each affected budget account if the program, project, or activity is not so set forth, and

(ii) for funds not provided in annual appropriation Acts, from each budget account activity as identified in the program and financing schedules contained in the appendix to the Budget of the United States Government for that fiscal year, applying the same reduction percentage as the percentage by which the account is reduced in such report.

* * * * * * *

SEC. 255. [2 U.S.C. 905] EXEMPT PROGRAMS AND ACTIVITIES.

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

* * * * * * *

(h) LOW-INCOME PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children * * *;
Child nutrition * * *;
Food stamp programs * * *;
Grants to States for Medicaid * * *;
Supplemental Security Income Program * * *; and
Women, infants, and children program * * *.

* * * * * * *

SEC. 256. [2 U.S.C. 906] EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

* * * * * * *

(d) SPECIAL RULES FOR MEDICARE PROGRAM.—

(1) MAXIMUM PERCENTAGE REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—The maximum permissible reduction for the health insurance programs under title XVIII of the Social Security Act for any fiscal year, pursuant to an order issued under section 252, consists only of a reduction of—

(A) 1 percent in the case of fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year,

in each separate payment amount otherwise made for a covered service under those programs without regard to this part.

(2) TIMING OF APPLICATION OF REDUCTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

(C) EFFECTIVE PERIOD OF ORDER FOR FISCAL YEAR 1986.—For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.

(3) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(4) NO EFFECT ON COMPUTATION OF AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(e) TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM.—Any order issued by the President under section 252 shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(f) TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any order issued by the President under section 252 shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

* * * * * * *

(h) TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS.—(1) For purposes of section 252—

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 252 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

* * * * * * *

[*Internal References.*—Social Security Act §§202(w), 215(i) and 1842(a)(4), the catchlines to title IV, Part D (at §451), title IV, Part E (at §470), titles IX and XVIII have footnotes referring to P.L. 99-177.]

P.L. 99-178, Approved December 12, 1985 (99 Stat. 1102)
Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986

* * * * * * *

Title II—Department of Health and Human Services

* * * * * * *

Social Security Administration

* * * * * * *

Limitation on Administrative Expenses

For necessary expenses, not more than $3,992,486,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein:

* * *

Provided, [None assigned.] That travel expense payments under section 1631(h) of such Act may be made only when travel of more than seventy-five miles is required: * * * *Provided further,* That none of the funds appropriated by this Act may be used for the manufacture, printing, or procuring of social security cards, as provided in section 205(c)(2)(D) of the Social Security Act, where paper and other materials used in the manufacture of such cards are produced, manufactured, or assembled outside of the United States.

* * * * * * *

[*Internal References.*—Social Security Act §205(c)(2)(D) and the catchline to §1631(h) have footnotes referring to P.L. 99-178.]

P.L. 99-190, Approved December 19, 1985 (99 Stat. 1185)
[Continuing Appropriations for Fiscal Year 1986]

* * * * * * *

SEC. 126. [None assigned.] Notwithstanding any other provision of this joint resolution, the Secretary of Health and Human Services shall extend, for one additional year, approval to the municipal health services demonstration projects located in Baltimore, Cincinnati, Milwaukee, and San Jose authorized under section

402(a) of the Social Security Amendments of 1967[1].

SEC. 127. [None assigned.] From the amounts awarded to a State from its allotment under section 2003 of the Social Security Act for fiscal year 1986, the State shall use to maintain and improve the availability and quality of training provided under section 401(b)(1), 98 Stat. 2196, such sums as the State may determine to be required.

* * * * * * *

SEC. 130. [None assigned.] (a) In the administration of subchapter III of chapter 83 of title 5, United States Code[2], title II of the Social Security Act, chapter 21 of the Internal Revenue Code of 1954[3], and title II of Public Law 98-168[4], the individual holding the position of Chief of the United States Capitol Police on January 1, 1985—

(1) shall be held and considered to have been appointed to that position before January 1, 1984,

(2) during the 60-day period following the date of the enactment into law of this section, shall be eligible to elect coverage under the provisions of such subchapter III, and

(3) upon such election, shall not be covered by section 210(a)(5)(G) of the Social Security Act, and section 3121(b)(5)(G) of the Internal Revenue Code of 1954[5], with respect to periods of service performed by such individual in such position after the election.

(b) Any period of service performed by such individual as Chief of the United States Capitol Police prior to making any such election shall, after such election and payment by or on behalf of such individual of appropriate contributions and interest covering such period of service, be considered as creditable service for purposes of such subchapter III and shall not be considered as covered service for purposes of title II of Public Law 98-168.

(c) Service performed by such individual as Chief of the United States Capitol Police after December 31, 1983, and prior to the election referred to in subsection (a), shall also be considered "employment" for purposes of the provisions of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, if such service would have been"employment" under such provisions but for this section.

* * * * * * *

[*Internal References.*—Social Security Act §210(a)(5)(G) and the catchlines to title II, §§1110 and 2003 have footnotes referring to P.L. 99-190.]

P.L. 99-264, Approved March 24, 1986 (100 Stat. 61)
White Earth Reservation Land Settlement Act of 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 331 note] That this Act may be cited as the "White Earth Reservation Land Settlement Act of 1985".

SEC. 2. [25 U.S.C. 331 note] The Congress finds that—

(1) claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reservation in Minnesota are the subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and are creating great hardship and uncertainty for government, Indian communities, and non-Indian communities;

(2) the lawsuits and uncertainty will result in great expense and expenditure of time, and could have a profound negative impact on the social and well-being of everyone on the reservation;

(3) the White Earth Band of Chippewa Indians, State of Minnesota, along with its political subdivisions, and other interested parties have made diligent efforts to fashion a settlement to these claims, and the Federal Government, by providing the assistance specified in this Act, will make possible the implementation of a permanent settlement with regard to these claims;

(4) past United States laws and policies have contributed to the uncertainty surrounding the claims;

---

[1] P.L. 90-248 (Vol. II, p. 477).
[2] Vol. II, p. 69.
[3] Vol. I, p. 867.
[4] Vol. II, p. 704.
[5] Vol. I, p. 877.

(5) it is in the long-term interest of the United States, State of Minnesota, White Earth Band, Indians, and non-Indians for the United States to assist in the implementation of a fair and equitable settlement of these claims; and

(6) this Act will settle unresolved legal uncertainties relating to these claims.

SEC. 3. [25 U.S.C. 331 note] For purposes of this Act:

(a) "Allotment" shall mean an allocation of land on the White Earth Reservation, Minnesota, granted, pursuant to the Act of January 14, 1889 (25 Stat. 642), and the Act of February 8, 1887 (24 Stat. 388), to a Chippewa Indian.

(b) "Allottee" shall mean the recipient of an allotment.

(c) "Full blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the roll approved by the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a Federal court of competent jurisdiction; it shall also refer to an individual who is not designated on said roll but who is the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was an Indian enrolled in any other federally recognized Indian tribe, band, or community.

(d) "Inherited" shall mean received as a result of testate or intestate succession or any combination of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

(e) "Mixed blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a Federal court of competent jurisdiction; it shall also refer to any descendants of an individual who was listed on said roll providing the descendant was not a full blood under the definition in subsection (c) of this section. The term "mixed blood" shall not include an Indian enrolled in any federally recognized Indian tribe, band, or community other than the White Earth Band.

(f) "Tax forfeited" shall mean an allotment which, pursuant to State law, was declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

(g) "Majority" shall mean the age of twenty-one years or older.

(h) "Secretary" shall mean the Secretary of the Interior or his/or her authorized representative.

(i) "Trust period" shall mean the period during which the United States held an allotment in trust for the allottee or the allottee's heirs. For the purpose of this Act, the Executive Order Numbered 4642 of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents for which there were no applications, and if such allotments were not specifically exempted from the Executive orders; and the Indian Reorganization Act of June 18, 1934, shall be deemed to have extended indefinitely trust periods on all allotments or interests therein the trust periods for which would otherwise have expired on June 18, 1934, or at any time thereafter. Said Executive orders and Act shall be deemed not to have extended the trust period for allotments or interests which were sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the Secretary, or for allotments or interests which were sold or mortgaged by anyone where such sale or mortgage was the subject of litigation in Federal court which proceeded to a judgment on the merits and where the outcome of such litigation did not vacate or void said sale or mortgage.

(j) "Interest", except where such item is used in conjunction with "compound", shall mean a fractional holding, less than the whole, held in an allotment.

(k) "Adult" shall mean having attained the age of majority.

(l) "Heir" shall mean one who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law.

(m) "Transfer" includes but is not limited to any voluntary or involuntary sale, mortgage, tax forfeiture or conveyance pursuant to State law; any transaction the purpose of which was to effect a sale, mortgage, tax forfeiture or conveyance pursuant to State law; any Act, event, or circumstance that resulted in a change of title to, possession of, dominion over, or control of an allotment or interest therein.

* * * * * * *

SEC. 9. [25 U.S.C. 331 note] The Secretary shall determine the heirs, if heretofore undetermined, or modify the inventory of an existing heirship determination of any full or mixed blood or Indian enrolled in any other federally recognized Indian tribe, band, or community, where appropriate for the purposes of this Act: *Provided,* That the Secretary shall accept any determination of heirship by the courts of the State of Minnesota as provided in section 5(a) of this Act.

* * * * * * *

SEC. 12. [25 U.S.C. 331 note] (a) There is established in the Treasury of the United States a fund to be known as the White Earth Economic Development and Tribal Government Fund. Money in this Fund shall be held in trust by the United States for the White Earth Band of Chippewa Indians, and shall be invested and managed by the Secretary in the same manner as tribal trust funds pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(b) The White Earth Economic Development and Tribal Government Fund shall consist of—

(1) money received by the White Earth Band as compensation pursuant to section 8; and

(2) money received by the White Earth Band as a result of amounts forfeited pursuant to section 8(f); and

(3) money received as an appropriation pursuant to section 15; and

(4) income accruing on such sums.

Income accruing to the White Earth Economic Development and Tribal Government Fund shall, without further appropriation, be available for expenditure as provided in subsection (c).

(c) Income from the fund may be used by the authorized governing body of the band for band administration. Principal and income may be used by the authorized governing body of the band for economic development, land acquisition, and investments: *Provided, however,* That under no circumstances shall any portion of the moneys described in subsection (b) be used for per capita payments to any members of the band: *Provided further,* That none of the funds described in subsection (b) shall be expended by the governing body of the band until—

(1) such body has adopted a band financial ordinance and investment plan for the use of such funds; and

(2) such body has submitted to the Secretary a waiver of liability on the part of the United States for any loss resulting from the use of such funds; and

(3) the Secretary has approved the band financial ordinance and investment plan. The Secretary shall approve or reject in writing such ordinance and plan within sixty days of the date it is mailed or otherwise submitted to him: *Provided,* That such ordinance and plan shall be deemed approved if, sixty days after submission, the Secretary has not so approved or rejected it. The Secretary shall approve the ordinance and plan if it adequately contains the element specified in this subsection.

* * * * * * *

SEC. 16. [25 U.S.C. 331 note] None of the moneys which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-264.]

P.L. 99-272, Approved April 7, 1986 (100 Stat. 82)
Consolidated Omnibus Budget Reconciliation Act of 1985

* * * * * * *

SEC. 9101. RATE OF INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

* * * * * * *

(e) [42 U.S.C. 1395ww note] EFFECTIVE DATE FOR INCREASE.—

(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

(A) the amendment made by subsection (b) shall apply to payments made under section 1886(d)(1)(A) of such Act made on the basis of discharges occurring on or after May 1, 1986; and

(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B)) for discharges occurring during fiscal year 1986 shall be deemed to have been 1/2 percent.

(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

(A) the amendment made by subsection (b) shall apply to payments under section 1886(d)(1)(A) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act) for the—

(i) first 7 months of the cost reporting period shall be 0 percent, and

(ii) for the remaining 5 months of the cost reporting period shall be 1/2 percent; and

(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been 1/2 percent.

(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendment made by subsection (b) shall apply to cost reporting periods beginning on or after October 1, 1985;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) were equal to 5/24 of 1 percent; and

(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been 1/2 percent.

(4) DEFINITION.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act.

SEC. 9102. ONE-YEAR EXTENSION OF PPS TRANSITION.

* * * * * * *

(d) [42 U.S.C. 1395ww note] EFFECTIVE DATES.—

(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) shall apply—

(A) to cost reporting periods beginning on or after October 1, 1985, but

(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act—

(i) during the first 7 months of the period the "target percentage" is 50 percent and the "DRG percentage" is 50 percent, and

(ii) during the remaining 5 months of the period the "target percentage" is 45 percent and the "DRG percentage" is 55 percent.

(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) shall apply to discharges occurring on or after May 1, 1986.

(4) EXCEPTION.—

(A) Notwithstanding any other provision of this subsection, the amendments made by this section shall not apply to payments with respect to the operating costs of inpatient hospital services (as defined in section 1886(a)(4) of the Social Security Act) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act) located in the State of Oregon.

(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section do not apply, for purposes of section 1886(d)(1)(A) of of[1] Social Security Act—

(i) during the first 7 months of the period the "target percentage" is 50 percent and the "DRG percentage" is 50 percent, and

(ii) during the remaining 5 months of the period the "target percentage" is 25 percent and the "DRG percentage" is 75 percent.

(C) Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(D) of such Act, the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section do not apply is, for discharges occurring on or after October 1, 1985, and before May 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges.

---

[1] As in original. Probably should be "the".

SEC. 9103. APPLICATION OF REVISED HOSPITAL WAGE INDEX.

* * * * * * *

(b) [42 U.S.C. 1395ww note] STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES.—(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act, in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies.

* * * * * * *

SEC. 9108. CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS.

(a) [42 U.S.C. 1395ww note] CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972, or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972), shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act if such system applies—

(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

(2) to the review of at least 75 percent of—

(A) all revenues or expenses in such geographic area for inpatient hospital services, and

(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX.

(b) [42 U.S.C. 1395ww note] APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

(c) [42 U.S.C. 1395ww note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

* * * * * * *

SEC. 9111. PAYMENTS TO SOLE COMMUNITY HOSPITALS.

* * * * * * *

(c) [None assigned.] STUDY.—The Secretary of Health and Human Services shall conduct a study of the effects of the amendment made by subsection (a). The Secretary shall report the results of such study, including recommendations for a permanent mechanism to take into account needed expansions of services by sole community hospitals and the hospital-specific medicare payment rates thereof, to the Congress prior to January 1, 1987.

* * * * * * *

SEC. 9113. REPORT ON IMPACT OF OUTLIER AND TRANSFER POLICY ON RURAL HOSPITALS.

(a) [None assigned.] REVIEW.—The Secretary of Health and Human Services shall review the impact of policies respecting outliers and patient transfers on payments under section 1886(d) of the Social Security Act to rural hospitals (particularly on rural hospitals with less than 100 beds).

(b) [None assigned.] REPORT.—The Secretary shall report to Congress on the findings of the review not later than January 1, 1987, and shall include in the report recommendations on changes in policies respecting outliers and patient transfers to the extent they adversely affect rural hospitals.

SEC. 9114. INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS.

(a) [42 U.S.C. 1395ww note] DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

(b) [42 U.S.C. 1395ww note] CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.

SEC. 9115. SPECIAL RULES FOR IMPLEMENTATION OF SUBPART.

(a) [42 U.S.C. 1395ww note] WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart.

(b) [42 U.S.C. 1395ww note] USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.

* * * * * * *

SEC. 9121. RESPONSIBILITIES OF MEDICARE HOSPITALS IN EMERGENCY CASES.

* * * * * * *

(d) [None assigned.] REPORT.—The Secretary of Health and Human Services shall, not later than 6 months after the effective date described in subsection (c), report to Congress on the methods to be used for monitoring and enforcing compliance with section 1867 of the Social Security Act.

SEC. 9122. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN CHAMPUS AND CHAMPVA PROGRAMS.

* * * * * * *

(c) [None assigned.] REFERENCE TO STUDY REQUIRED.—For a study of the use by CHAMPUS of the medicare prospective payment system, see section 634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525), the deadline for which is extended under section 2002 of this Act.

(d) [42 U.S.C. 1395cc note] REPORT.—The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

* * * * * * *

SEC. 9128. SENSE OF THE SENATE WITH RESPECT TO INPATIENT HOSPITAL DEDUCTIBLE.

[None assigned.] In view of the $92 Medicare hospital deductible increase that went into effect January 1, 1986, it is the sense of the Senate that the Committee on Finance should report legislation which will reform calculation of the annual increase in such deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

SEC. 9129. MEDICARE COVERAGE OF STATE AND LOCAL EMPLOYEES.

[None assigned.] For provision providing for medicare coverage of certain State and local employees, see section 13205 of this Act.

* * * * * * *

SEC. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

* * * * * * *

(c) [42 U.S.C. 1395ww note] STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act. The study shall address—

(A) the types and numbers of such programs, and number of students supported or trained under each program;

(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

(d) [42 U.S.C. 1395ww note] GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act with respect to patients in different teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984.

(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

(e) [42 U.S.C. 1395ww note] REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

(f) [42 U.S.C. 1395ww note] STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

(1) the types of services provided;

(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

(g) [42 U.S.C. 1395ww note] ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—The Secretary of Health and Human Services shall establish a system, for implementation not later than July 1, 1987, which provides for a unique identifier for each physician who furnishes services for which payment may be made under title XVIII of the Social Security Act.

(h) [42 U.S.C. 1395ww note] PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

* * * * * * *

(j) [42 U.S.C. 1395ww note] SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act or section 402 of the Social Security Amendments of 1967[2], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

SEC. 9204. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

(a) [42 U.S.C. 1395ww note] MORATORIUM.—Prior to January 1, 1988[3], the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

(b) [42 U.S.C. 1395ww note] COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

SEC. 9205. HOME HEALTH WAIVER OF LIABILITY.

[42 U.S.C. 1395y note] The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until 12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act.

* * * * * * *

SEC. 9215. EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

[42 U.S.C. 1395b-1 note] The Secretary of Health and Human Services shall extend, for a period of three additional years, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967.

* * * * * * *

SEC. 9217. LIVER TRANSPLANTS.

(a) [None assigned.] The Senate finds that:

(1) There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

(2) There are 4,000 to 4,700 potential candidates in the United States each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

(3) There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

(4) After extensive review and consideration of all the available data, an National Institutes of Health expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

(5) National Institutes of Health further recommended that liver transplants be done in individuals under 18 years of age.

---

[2] P.L. 99-514, §1895(b)(10), inserted "or section 402 of the Social Security Amendments of 1967".

[3] P.L. 99-509, §9339(e), struck out "1987" and substituted "1988".

(6) The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

(7) The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) [None assigned.] Based upon the above findings, it is the sense of the Senate that:

(1) For the purposes of title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

(2) A liver transplant shall be covered under such title when reasonable and medically necessary.

(3) The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

SEC. 9218. STUDIES RELATING TO PHYSICAL THERAPISTS AND OTHER PROFESSIONALS.

(a) [None assigned.] SUPERVISION OF HOME HEALTH SERVICES.—The Secretary of Health and Human Services shall conduct a study of the advisability of changing the requirements of title XVIII of the Social Security Act to allow home health services to be provided under the supervision of a physical therapist or other health care professional, rather than requiring the supervision of a physician or registered nurse.

(b) [None assigned.] OFFICE REQUIREMENT.—The Secretary of Health and Human Services shall conduct a study on the advisability of deleting the requirement under such title that a physical therapist must have an office equipped with specified equipment, even if such therapist provides all such services in patients' homes.

(c) [None assigned.] REPORTS.—The Secretary shall report the results of the studies to the Congress prior to October 1, 1986.

* * * * * * *

SEC. 9220. EXTENSION OF ON LOK WAIVER.

(a) [None assigned.] CONTINUED APPROVAL.—

(1) MEDICARE WAIVERS.—Notwithstanding any limitations contained in section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services shall continue approval of the risk-sharing application (described in section 603(c)(1) of Public Law 98-21) for waivers of certain requirements of title XVIII of the Social Security Act after the end of the period described in that section.

(2) MEDICAID WAIVERS.—Notwithstanding any limitations contained in section 1115 of the Social Security Act, the Secretary shall approve any application of the Department of Health Services, State of California, for a waiver of requirements of title XIX of such Act in order to continue carrying out the demonstration project referred to in section 603(c)(2) of Public Law 98-21 after the end of the period described in that section.

(b) [None assigned.] TERMS, CONDITIONS, AND PERIOD OF APPROVAL.—The Secretary's approval of an application (or renewal of an application) under this section—

(1) shall be on the same terms and conditions as applied with respect to the corresponding application under section 603(c) of Public Law 98-21 as of July 1, 1985, except that requirements relating to collection and evaluation of information for demonstration purposes (and not for operational purposes) shall not apply; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with the terms and conditions described in paragraph (1).

SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) [None assigned.] APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through July 31, 1987[4], of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

---

[4] P.L. 99-514, §1895(b)(13), struck out "September 30, 1986" and substituted "July 31, 1987".

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project as in effect on August 31, 1985.

* * * * * * *

SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

* * * * * * *

(b) * * *

(3) [42 U.S.C. 1395u note] PERIOD FOR ENTERING PARTICIPATION AGREEMENTS.—The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act, as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.

* * * * * * *

SEC. 9303. PAYMENT FOR CLINICAL LABORATORY SERVICES.

(a) * * *

(3) [42 U.S.C. 1395l note] TRANSITION.—The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act for 1986—

(A) shall take effect on January 1, 1987,

(B) shall apply for the 12-month period beginning on that date, and

(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.

* * * * * * *

(c) [None assigned.] REPORT ON MINIMUM STANDARDS FOR CLINICAL LABORATORIES THAT ARE PART OF, OR ASSOCIATED WITH, PHYSICIANS' OFFICES.—The Secretary of Health and Human Services shall report to Congress, not later than 12 months after the date of the enactment of this Act, on the standards that might be established under the medicare program for clinical laboratories which are part of or associated with a physician's office to assure the health and safety of individuals with respect to whom the laboratories perform clinical diagnostic laboratory tests for which payment may be made under the program. In recommending standards, the Secretary shall consider the differences in the scope, type, and complexity of tests performed by such laboratories and such other factors as may indicate a need for different standards for laboratories with different characteristics.

SEC. 9304. DETERMINATIONS OF INHERENT REASONABLENESS OF CHARGES AND CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.

* * * * * * *

(b) [42 U.S.C. 1395u note] COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.—(1) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

(2) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

(3) In this subsection, the term "hospital-compensated physician" means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.

* * * * * * *

SEC. 9307. PAYMENT FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS AND OTHER OPERATIONS.

* * * * * * *

(d) [42 U.S.C. 1395y note] EXTENSION OF PROHIBITION TO OTHER PROCEDURES.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery is generally not medically necessary and the circumstances under which the use of an assistant at surgery is generally appropriate but should be subject to prior approval of an appropriate entity. The Secretary shall report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

* * * * * * *

SEC. 9314. DEMONSTRATION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE.

(a) [42 U.S.C. 1395b-1 note] DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act (hereinafter in this section referred to as "medicare beneficiaries").

(b) [42 U.S.C. 1395b-1 note] PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

(1) health screenings,
(2) health risk appraisals,
(3) immunizations, and
(4) counseling on and instruction in—
    (A) diet and nutrition,
    (B) reduction of stress,
    (C) exercise and exercise programs,
    (D) sleep regulation,
    (E) injury prevention,
    (F) prevention of alcohol and drug abuse,
    (G) prevention of mental health disorders,
    (H) self-care, including use of medication, and
    (I) reduction or cessation of smoking.

(c) [42 U.S.C. 1395b-1 note] CONDUCT OF PROGRAM.—The demonstration program shall—

(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

(2) be conducted in no fewer than five sites (at least one of which shall serve a rural area)[5], which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

(4) be designed—

(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

---

[5] P.L. 99-509, §9344(d)(1), inserted "(at least one of which shall serve a rural area)".

(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

(C) to facilitate evaluation under subsection (d).

(d) [42 U.S.C. 1395b-1 note] EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act.

(e) [42 U.S.C. 1395b-1 note] REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

(2) Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report—

(A) the evaluation described in subsection (d), and

(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

(f) [42 U.S.C. 1395b-1 note] FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the administrative costs of the demonstration program shall not exceed \$5,900,000[6] over the duration of the program.

(g) [42 U.S.C. 1395b-1 note] WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

* * * * * * *

SEC. 9401. 100 PERCENT PEER REVIEW OF CERTAIN SURGICAL PROCEDURES.

* * * * * * *

(e) [42 U.S.C. 1320c-13 note] STUDY.—The Secretary of Health and Human Services shall conduct a study of the results of the amendments made by this section, and shall report the results of the study to the Congress within 36 months after the date of the enactment of this Act.

* * * * * * *

SEC. 9501. SERVICES FOR PREGNANT WOMEN.

* * * * * * *

(d) EFFECTIVE DATES.—

(1) [42 U.S.C. 1396d note] EXPANDED COVERAGE.—(A) The amendments made by subsection (a) apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

---

[6] P.L. 99-509, §9344(d)(2), struck out "demonstration program shall not exceed \$4,000,000" and substituted "administrative costs of the demonstration program shall not exceed \$5,900,000".

* * * * * * *

SEC. 9502. MODIFICATIONS OF WAIVER PROVISIONS FOR HOME AND COMMUNITY-BASED SERVICES.

* * * * * * *

(f) [42 U.S.C. 1396n note] WAIVER EXTENSIONS.—The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.

* * * * * * *

SEC. 9503. THIRD-PARTY LIABILITY.

* * * * * * *

(c) [42 U.S.C. 1396a note] REGULATIONS.—The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act within 6 months after the date of the enactment of this Act.

* * * * * * *

(g) [42 U.S.C. 1396a note] * * *

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act occurring prior to the effective date of the amendments made by this section.

* * * * * * *

SEC. 9509. REVALUATION OF ASSETS.

* * * * * * *

(b) [42 U.S.C. 1396a note] EFFECTIVE DATES.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements imposed by the amendments made by this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(c) [42 U.S.C. 1396a note] GAO STUDY.—The Comptroller General shall conduct a study of the effects of the amendments made by this section, and shall report the results of such study to the Congress two years after the date of the enactment of this Act.

* * * * * * *

SEC. 9514. REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

[42 U.S.C. 1396d note] The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act within 60 days after the date of the enactment of this Act.

SEC. 9515. LIFE SAFETY CODE RECOGNITION.

[42 U.S.C. 1396d note] For purposes of section 1905(c) of the Social Security Act, an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.

SEC. 9516. CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

* * * * * * *

(b) [42 U.S.C. 1396r note] * * *

(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.

(c) [42 U.S.C. 1396r note] REPORT.—The Secretary of Health and Human Services shall submit a report to the Congress on the implementation and results of section 1919 of the Social Security Act. Such report shall be submitted not later than 30 months after the effective date of final regulations promulgated to implement such section.

SEC. 9517. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

* * * * * * *

(c) * * *

(2) [42 U.S.C. 1396b note] (A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.[7]

(B) In the case of a health insuring organization—

(i) which first becomes operational on or after January 1, 1986, but

(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act and before such date, certain requirements of section 1902 of such Act,

clauses (ii) and (vi)[8] of section 1903(m)(2)(A) of such Act shall not apply during the period for which such waiver is effective.

(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).[9]

(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.[10]

* * * * * * *

SEC. 9519. REPORT ON ADJUSTMENT IN MEDICAID PAYMENTS FOR HOSPITALS SERVING DISPROPORTIONATE NUMBERS OF LOW INCOME PATIENTS.

[None assigned.] The Secretary of Health and Human Services shall transmit to Congress, not later than October 1, 1986, a report that—

(1) describes the methodology used by States under section 1902(a)(13)(A) of the Social Security Act, in their making payments to hospitals, in taking into account the situation of hospitals that serve a disproportionate number of low income patients with special needs;

(2) identifies each of those hospitals that have had the amount of their payments under that title adjusted under that section; and

(3) for each of those hospitals, describes the proportion of total inpatient-days attributable to low income patients and the proportion of total inpatient-days attributable to patients entitled to medical assistance under that title.

SEC. 9520. TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN.

---

[7] P.L. 99-514, §1895(c)(4)(A), added this sentence.

[8] P.L. 99-514, §1895(c)(4)(B), struck out "(iv)" and substituted "(vi)".

[9] P.L. 99-514, §1895(c)(4)(C), added this subparagraph.

[10] P.L. 99-509, §9435(e), added this subparagraph.

(a) [42 U.S.C. 1396a note] APPOINTMENT OF TASK FORCE.—The Secretary of Health and Human Services, within six months after the date of the enactment of this Act, shall establish a task force concerning alternatives to institutional care for technology-dependent children (as defined in subsection (e)).

(b) [42 U.S.C. 1396a note] MEMBERSHIP.—The task force shall include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children.

(c) [42 U.S.C. 1396a note] FUNCTIONS OF TASK FORCE.—The task force shall—

(1) identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children; and

(2) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

(d) [42 U.S.C. 1396a note] REPORT.—The task force shall make a final report to the Secretary and to the Congress on its activities not later than two years after the date of the enactment of this Act.

(e) [42 U.S.C. 1396a note] DEFINITION.—In this section, the term "technology-dependent child" means a child who has a chronic illness which makes the child dependent upon the continuing use of medical care technology (such as a ventilator).

SEC. 9522. EXPANSION OF SERVICES UNDER DEMONSTRATION WAIVERS.

[None assigned.] In the case of waivers granted to (or submitted during 1986 by) the State of Oregon under section 1915(b) of the Social Security Act, the Secretary of Health and Human Services may waive the requirements of section 1903(m)(2)(A) of such Act with respect to any entity providing services under any such waiver if such entity does not provide more than 5 of the services listed in section 1903(m)(2)(A) of such Act, and does not provide inpatient hospital services.

SEC. 9523. EXTENSION OF TEXAS WAIVER PROJECT.

(a) [None assigned.] RENEWED APPROVAL.—Notwithstanding any limitations contained in section 1115 of the Social Security Act but subject to subsection (b) of this section, the Secretary of Health and Human Services, upon application, shall renew approval of demonstration project number 11-P-97473/6-06 ("Modifications under the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged"), previously approved under that section, until January 1, 1989.

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's renewed approval of the project under subsection (a)—

(1) shall be on the same terms and conditions as applied to the project as of December 31, 1985; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with such terms and conditions.

SEC. 9524. WISCONSIN HEALTH MAINTENANCE ORGANIZATION WAIVER.

[None assigned.] The waiver granted to the State of Wisconsin pursuant to section 1915(b) of the Social Security Act relating to the requirements of section 1903(m) of such Act in conjunction with a waiver of the requirements of section 1902(a)(23) of such Act shall, upon request by the State, be reinstated, and shall be renewable for terms of 2 years, subject to the showings required generally under section 1915(b) of such Act.

* * * * * * *

SEC. 9528. ANNUAL CALCULATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

* * * * * * *

(b) [42 U.S.C. 1301 note] EFFECTIVE DATE.—The amendments made by this section shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act.

(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903[11] of the Social Security Act, the amendments made by subsection (a) shall not apply to a State with respect to either such section[12] if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.[13]

---

[11] P.L. 99-509, §9102(1), struck out "payment to a State under section 1903" and substituted "payments to States under sections 403 and 1903".

SEC. 9529. MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AND FOSTER CARE.

* * * * * * *

(b) * * *

(2) [42 U.S.C. 1396a note] In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act) entered into before the date of the enactment of this Act—

(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.

* * * * * * *

SEC. 9601. [42 U.S.C. 1395b note] RECOMMENDATIONS FOR LONG-TERM HEALTH CARE POLICIES.

(a) [42 U.S.C. 1395b note] ESTABLISHMENT OF TASK FORCE.—(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a Task Force on Long-Term Health Care Policies (hereinafter in this section referred to as the "Task Force"). The Task Force shall be established not later than 60 days after the date of the enactment of this Act and in consultation with the National Association of Insurance Commissioners.[14]

(b) [42 U.S.C. 1395b note] COMPOSITION OF TASK FORCE.—The Task Force shall be composed of 18 members, which shall include—

(1) two members representing the National Association of Insurance Commissioners,

(2) three members representing Federal and State agencies with responsibilities relating to health or the elderly,

(3) three members representing private insurers,

(4) three members from organizations representing consumers or the elderly, and

(5) three members from organizations representing providers of long-term health care services.

The Secretary shall designate a member of the Task Force as chair.

(c) [42 U.S.C. 1395b note] DEVELOPMENT OF RECOMMENDATIONS.—The Task Force shall develop recommendations for long-term health care policies, including recommendations designed—

(1) to limit marketing and agent abuse for those policies,

(2) to assure the dissemination of such information to consumers as is necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage,

(3) to assure that benefits provided under the policies are reasonable in relationship to premiums charged, and

(4) to promote the development and availability of long-term health care policies which meet these recommendations.

(d) [42 U.S.C. 1395b note] REPORT.—Not later than 18 months after the date of the enactment of this Act, the Task Force shall report to the Secretary, to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate respecting—

(1) the recommendations developed under subsection (c), including an explanation of the reasons for their selection, and

(2) such recommendations for additional activities respecting long-term health care policies as the Task Force finds appropriate.

The Secretary, in cooperation with the National Association of Insurance Commissioners, shall provide for the dissemination of the report to each of the States.

---

[12] P.L. 99-509, §9102(2), inserted "with respect to either such section".

[13] P.L. 99-509, §9421(a), added this subsection.

[14] As in original. No subsection (a)(2) enacted.

(e) [42 U.S.C. 1395b note] TERMINATION OF TASK FORCE.—The Task Force shall terminate 90 days after the date of submission of the report required under subsection (d).

(f) [42 U.S.C. 1395b note] REPORTS OF SECRETARY.—The Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate two reports on—

(1) actions taken by the States to implement the recommendations developed under this section and to recommend additional action; and

(2) recommendations for legislative and administrative action, if any, needed to respond to issues raised by the Task Force or to improve consumer protection with respect to long-term health care policies.

The first report shall be transmitted 18 months after the date the report is made under subsection (d), and the second report shall be transmitted 18 months later.

(g) [42 U.S.C. 1395b note] LONG-TERM HEALTH CARE POLICY DEFINED.—In this section, the term "long-term health care policy" means an insurance policy, or similar health benefits plan, which is designed for or marketed as providing (or making payments for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

(h) [42 U.S.C. 1395b note] ASSURANCE OF STATES' JURISDICTION.—Nothing in this section shall be construed as recommending Federal preemption of the States in overseeing the operation and regulation of insurance carriers in their respective jurisdictions.

* * * * * * *

Sec. 12102. DISABILITY ADVISORY COUNCIL.

(a) [42 U.S.C. 907 note] APPOINTMENT OF COUNCIL.—Within ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services shall appoint a special Disability Advisory Council.

(b) [42 U.S.C. 907 note] MEMBERSHIP OF COUNCIL.—The Disability Advisory Council shall consist of a Chairman and not more than twelve other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or from both such sectors), organizations representing disabled people, and the public. The Council shall meet as often as may be necessary for the performance of its duties under this section, but not less often than quarterly.

(c) [42 U.S.C. 907 note] DUTIES OF COUNCIL.—(1) The Advisory Council shall conduct studies and make recommendations with respect to the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the appropriate State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(d) [42 U.S.C. 907 note] PROVISION OF ASSISTANCE TO COUNCIL; COMPENSATION OF MEMBERS.—(1) The Disability Advisory Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary of Health and Human Services shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out such functions.

(2) Appointed members of the Council, while serving on business of the Council (inclusive of traveltime), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(e) [42 U.S.C. 907 note] REPORTS.—The Disability Advisory Council shall submit a report (including any interim reports the Council may have issued) of its findings and recommendations to the Secretary of Health and Human Services not later than December 31, 1986; and such report and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

(f) [42 U.S.C. 907 note] TERMINATION.—After the date of the transmittal to the Congress of the report required by subsection (e), the Disability Advisory Council shall cease to exist.

* * * * * * *

SEC. 12114. COVERAGE OF CONNECTICUT STATE POLICE.

[42 U.S.C. 418 note] Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

* * * * * * *

SEC. 12202. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.

* * * * * * *

(b) [42 U.S.C. 1383c note] IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.

(2) Each State shall—

(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

(B) solicit their applications for such assistance, and

(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.

* * * * * * *

SEC. 12301. AFDC QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

(a) [42 U.S.C. 603 note] STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act and for the Medicaid Program under title XIX of such Act. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2)[15].

(b) [42 U.S.C. 603 note] MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act (hereafter in this section referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV-A of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV-A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

(c) [42 U.S.C. 603 note] RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported[16], the Secretary shall publish regulations which shall—

(A) restructure the quality control systems under titles IV-A and XIX of the Social Security Act to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems, and shall reduce payments to States—

(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

(d) [42 U.S.C. 603 note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

* * * * * * *

SEC. 14001.

* * * * * * *

---

[15] P.L. 99-514, §1710(1), struck out "of the enactment of this Act" and substituted "the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2)". Executed as if amendment made to Consolidated Omnibus Budget Reconciliation Act of 1985 instead of Consolidated Omnibus Reconciliation Act of 1985.

[16] P.L. 99-514, §1710(2), struck out "18 months after the date of the enactment of this Act" and substituted "6 months after the date on which the results of both studies required under subsection (a)(3) have been reported". Executed as if amendment made to Consolidated Omnibus Budget Reconciliation Act of 1985 instead of Consolidated Omnibus Reconciliation Act of 1985.

(e) **[**31 U.S.C. 6701 note**]** EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the repeal and amendments made by this section, and the provisions of this section, shall take effect on the earlier of—

(A) the date of the adjournment sine die of the 99th Congress, or

(B) December 31, 1986,

unless the provisions of chapter 67 of title 31, United States Code, are amended before the earlier of such dates to apply to any entitlement period beginning after September 30, 1986.

* * * * * * *

(3) Nothing in this section shall be construed to prevent the payment of any allocation for the entitlement period ending September 30, 1986.

* * * * * * *

[*Internal References.*—Social Security Act §1886(d)(3)(C)(ii)(I) and (II) cite §9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 (Title IX of P.L. 99-272) and §1886(d)(2)(C)(i) cites §9104(a). Social Security Act titles II, IV, Part A (at §401), XVI (SSI), XVIII and XIX, the catchlines to §§218, 1110, 1114, 1115, 1164, 1813, 1833, 1861(m) and (p), 1867, 1881, 1886, and 1919, and §§706(e), 1101(a)(8)(B), 1115(b)(2)(B), 1634(b)(4), 1833(h)(6), 1842(b)(11)(A)(ii), (h)(8), and (k)(2), 1861(v)(1)(P), 1862(a)(1)(A), 1866(a)(1)(J), 1886(b)(3)(B)(ii), (c)(1)(A), (c)(7), (d)(1)(A)(ii) and (iii), (d)(1)(C), (d)(1)(C)(iii) and (iv), (d)(1)(D) and (d)(1)(D)(ii), (d)(5)(C)(ii), and (d)(8)(B)(ii), 1902(a)(10)(A)(ii)(VIII)(cc), (a)(13)(A), (a)(13)(B), (a)(13)(C)(ii), (a)(13)(D), (a)(13)(E), (a)(25)(F)(ii), and (g), 1903(m)(2)(A), (r)(4)(A), (r)(6)(J), and (u)(1)(D)(iv), 1905(c), (n)(1)(A), (n)(1)(B), and (n)(1)(C), 1912(a)(1)(A) and (a)(1)(C), 1915(b)(end) and (c)(1) have footnotes referring to P.L. 99-272.**]**

P.L. 99-319, Approved May 23, 1986 (100 Stat. 478)

Protection and Advocacy for Mentally Ill Individuals Act of 1986

* * * * * * *

FINDINGS AND PURPOSE

SEC. 101. **[**42 U.S.C. 10801**]** (a) The Congress finds that—

(1) mentally ill individuals are vulnerable to abuse and serious injury;

(2) mentally ill individuals are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(3) State systems for monitoring compliance with respect to the rights of mentally ill individuals vary widely and are frequently inadequate.

(b) The purposes of this Act are—

(1) to ensure that the rights of mentally ill individuals are protected; and

(2) to assist States to establish and operate a protection and advocacy system for mentally ill individuals which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of mentally ill individuals if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

DEFINITIONS

SEC. 102. **[**42 U.S.C. 10802**]** For purposes of this title:

(1) The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury to a mentally ill individual, and includes acts such as—

(A) the rape or sexual assault of a mentally ill individual;

(B) the striking of a mentally ill individual;

(C) the use of excessive force when placing a mentally ill individual in bodily restraints; and

(D) the use of bodily or chemical restraints on a mentally ill individual which is not in compliance with Federal and State laws and regulations.

(2) The term "eligible system" means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(3) The term "mentally ill individual" means an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B) who is an inpatient or resident in a facility rendering care or treatment.

(4) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury to a mentally ill individual or which placed a mentally ill individual at risk of injury, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a mentally ill individual, the failure to provide adequate nutrition, clothing, or health care to a mentally ill individual, or the failure to provide a safe environment for a mentally ill individual.

(5) The term "Secretary" means the Secretary of Health and Human Services.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * * * *

SYSTEMS REQUIREMENTS

SEC. 105. [42 U.S.C. 10805] (a) A system established in a State under section 103 to protect and advocate the rights of mentally ill individuals shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of mentally ill individuals if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a mentally ill individual; and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to mentally ill individuals;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 106, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access; and

(B) any individual—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such individual has been subject to abuse or neglect;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act for the furnishing of the information required by subsection (b);

(6) establish a board—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of mentally ill individuals; and

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least one-half the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year.

(b) The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to mentally ill individuals in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles XVIII and XIX have footnotes referring to P.L. 99-319.]

P.L. 99-335, Approved June 6, 1986 (100 Stat. 514)

Federal Employees' Retirement System Act of 1986

* * * * * * *

SEC. 301. [5 U.S.C. 8331 note] ELECTIONS.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

(B) to become subject to chapter 84 of such title.

An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual—

(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

(i) elect to become subject to chapter 84 of such title; or

(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

(i) during the period after December 31, 1986, and before July 1, 1987; or

(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.[1]

* * * * * * *

SEC. 302. [5 U.S.C. 8331 note] EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as "covered service") shall be creditable under chapter 84 of title 5, United States Code, if—

(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the "Fund"), with interest (computed under section 8334(e) of such title); and

(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

(C) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregate, is equal to less than 5 years;

shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

(D) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregrate, is equal to 5 years or more;

shall be creditable for purposes of—

(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

---

[1] P.L. 99-556, §301, amended paragraph (3) in its entirety.

(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1)(B), or 8461 of such title which relates to a minimum period of service for entitlement to an annuity;

(III) the provisions of paragraphs (4) and (6);

(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter; and

(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller.

(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a minimum period of service for entitlement to an annuity; and

(ii) the provisions of paragraph (4).

(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual's accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual's accrued benefits under the Federal Employees' Retirement System (as determined under paragraph (5)).

(ii) An annuity computed under this subparagraph shall be deemed to be the individual's annuity computed under section 8415 of title 5, United States Code.

(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual's having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

(4) Except as provided in paragraph (12)(B), accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter.

(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

(B) with respect to service performed before such effective date—

(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes of determining average pay under chapter 83 or 84 of title 5, United States Code.

(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(f) of such title shall apply with respect to the sum computed under such paragraph.

(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

(12)(A) If the electing individual is subject to section 8344 of title 5, United States Code, at the time of making the election, payment of annuity benefits otherwise payable to such individual under subchapter III of chapter 83 of such title (and any related deductions from pay) shall terminate as of the effective date of the election.

(B) Accrued benefits under paragraph (4) for an individual described in subparagraph (A) shall be computed—

(i) in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter; and

(ii) as if the individual's reemployment terminated on the effective date of the election.

(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

(2)(A) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

(i) the amount contributed with respect to such period, exceeds

(ii) the amount required under such clause (i) with respect to such period;

(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such clause (ii) with respect to such period; and

(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such subparagraph with respect to such period.

(2) A refund under this subsection—

(A) shall be payable with interest, computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.[2]

(B) shall be payable upon written application therefor filed with the Office of Personnel Management.

SEC. 303. [5 U.S.C. 8331 note] PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

(B) 1.3 percent of such individual's total basic pay for such period; and

(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

A refund under this subsection shall be computed with interest in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.[3]

(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual's pay had been subject to such section during such period;

(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.

* * * * * * *

[*Internal References.*—Social Security Act §210(a)(5)(H) cites §301(a) of the Federal Employees' Retirement System Act of 1986. P.L. 88-643, §307 (Vol. II, p. 462), cites §§301 through 304 of the Federal Employees' Retirement System Act of 1986.]

P.L. 99-346, Approved June 30, 1986 (100 Stat. 674)

Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act

* * * * * * *

SHORT TITLE; DEFINITIONS

SECTION. 1. [None assigned.] (a) This Act may be cited as the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

(b) For purposes of this Act—

---

[2] P.L. 99-556, §302(a), amended subparagraph (A) in its entirety.

[3] P.L. 99-556, §302(b), added this sentence.

(1) The term "tribe" means the Saginaw Chippewa Indian Tribe of Michigan.

(2) The term "Tribal Council" means the Saginaw Chippewa Tribal Council.

(3) The term "Secretary" means the Secretary of the Interior.

* * * * * * *

INVESTMENT FUND

SEC. 3. [None assigned.]

* * * * * * *

(e)(1) From the funds described in section 2 and transferred to the Tribal Council pursuant to section 5(a), the sum of $1,000,000 shall be set aside within 90 days of receipt of such funds by the Tribal Council for the express purposes of establishing a separate Elderly Assistance Investment Fund.

(2) Income generated by the Elderly Assistance Investment Fund shall be distributed on a per capita basis to each enrolled Tribal member who is 50 years of age or older on the date that is 18 months after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe.

(3) Tribal members entitled to participate in the distribution of such income shall submit verifiable documentation as to their age to the Tribal Council no later than the date that is 3 months after the date established pursuant to paragraph (2) of this subsection. The Tribal Council shall prepare and certify a list of all Tribal members entitled to participate in the distribution of income from the Elderly Assistance Investment Fund within 30 days following the above date.

(4) Distribution of the income from the Elderly Assistance Investment Fund shall be made pursuant to the following terms and conditions:

(A) No Tribal member certified to participate shall receive more than the aggregate sum of $3,000 from the income generated by the Elderly Assistance Investment Fund.

(B) Payments shall be made to each Tribal member certified to participate on an equal pro-rata basis from the available income generated by the Elderly Assistance Investment Fund.

(C) The initial per capita distribution shall be made no sooner than the date that is 30 days after the date that the Tribal Council certifies the list of eligible Tribal members pursuant to paragraph (3) nor no later than 120 days following such date.

(E)[1] If succeeding per capita distributions are necessary to bring the aggregate payment to each Tribal member certified to participate to the sum of $3,000, such distribution shall be made on or before the anniversary date of the initial per capita distribution.

(F)[2] If any Tribal member certified to participate should die before receiving the initial or any succeeding per capita distribution, the payment which would have been paid to that individual shall be returned to the Elderly Assistance Investment Fund for distribution in accordance with this subsection.

(5) When all Tribal members certified to participate in the per capita distribution have been paid the aggregate sum of $3,000, the principal sum of $1,000,000 together with any remaining interest of the Elderly Assistance Investment Fund shall revert back and become part of the Investment Fund established pursuant to subsection (a)(1): *Provided,* That, nothing in this subsection shall be construed to prevent the Tribal Council from establishing an Elderly Assistance Investment Fund or Program providing for per capita distributions or other programs for elderly Tribal members from the income of the Investment Fund and subject to such terms, conditions and eligibility criteria as the Tribal Council may provide.

* * * * * * *

TREATMENT OF AMOUNTS PAID OR DISTRIBUTED FROM THE INVESTMENT FUND

SEC. (6). [None assigned.] (a) No amount of any payment or distribution—

(1) from the principal or income of the Investment Fund, or

(2) of any funds transferred to the Tribal Council under section 8(a)

---

[1] As in original. Probably should be "(D)".

[2] As in original. Probably should be "(E)".

to any payee or distributee who is an enrolled member of the tribe shall be included in the gross income of the payee or distributee for purposes of any Federal, State, or local income tax.

(b) Any payments or distributions described in subsection (a), and the availability of any amount for such payments or distributions, shall not be considered as income or resources or otherwise used as the basis for denying or reducing—

(1) any financial assistance or other benefit under the Social Security Act—

(A) to which any enrolled member of the tribe, or the household of any such member, is otherwise entitled, or

(B) for which such member or household is otherwise eligible, or

(2) any other—

(A) Federal financial assistance,

(B) Federal benefit, or

(C) benefit under any program funded in whole or in part by the Federal Government,

to which such member or household is otherwise entitled or for which such member or household is otherwise eligible.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-346.]

P.L. 99-377, Approved August 8, 1986 (100 Stat. 805)

[Chippewas of the Mississippi]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [None assigned.] Notwithstanding any other provision of law, the funds appropriated for the Indian Claims Commission judgment awards in Docket 18-S for the Chippewas of the Mississippi (less attorney fees and litigation expense and plus all investment income and interest accrued) shall be used and distributed under this Act.

SEC. 2. [None assigned.] The Secretary of the Interior shall divide the amount for Docket 18-S with two-thirds of the funds for the Chippewas of Lake Superior and one-third for the Chippewas of the Mississippi. The respective shares of the Mississippi Band in Docket 18-S shall be divided by reservation affiliation as follows:

(1) Mille Lac Reservation, Minnesota 569/7624;
(2) White Earth Reservation, Minnesota 6431/7624; and
(3) Leech Lake Reservation, Minnesota 624/7624.

* * * * * * *

SEC. 3. [None assigned.] The apportioned shares of funds under section 2 of this Act of each reservation or community shall be used as follows:

(1) Eighty percent of each reservation's share shall be held and administered by the Secretary for per capita distribution and the sums (including the investment income accrued) shall be distributed in a sum as nearly equal as possible for each individual born on or prior to and living on the date of enactment of this Act who is enrolled on the respective tribal membership roll brought current to such date of enactment under tribal enrollment procedures.

(2) Twenty percent of each reservation's share shall be held in trust in separate accounts for the tribal organization of the reservation and invested by the Secretary under the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a) until needed for use or distribution under the tribe's plan approved by the Secretary.

(3) The per capita distributions under this section from funds apportioned to reservations or communities of the Minnesota Chippewa Tribe shall only be made to those individuals enrolled with the historical band designation for which the award was made. Plans submitted by two or more of the reservation business committees of the Minnesota Chippewa Tribe may include joint investment and use programs.

* * * * * * *

SEC. 4. [None assigned.] (a) MISCELLANEOUS.—The per capita shares under this Act of competent adults shall be paid directly to them. The per capita shares under this Act of deceased individual beneficiaries, legal incompetents, and minors shall be determined and distributed under regulations prescribed by the Secretary which are generally applicable to funds distributed under the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1401 et seq.).

(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

(c) Amounts remaining after per capita payments under this Act shall revert to the governing body of the respective tribal group for program purposes by the Secretary.

(d) No person shall be entitled to receive under this Act more than one per capita share from the same Docket award.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(7), 1002(a)(8), 1402(a)(8), 1602(a)(14)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-377.]

P.L. 99-425, Approved September 30, 1986 (100 Stat. 966)

Human Services Reauthorization Act of 1986

* * * * * * *

TITLE VI—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

SEC. 601. [42. U.S.C. 10901 note] SHORT TITLE.

This title may be cited as the "Child Development Associate Scholarship Assistance Act of 1985".

SEC. 602. [42 U.S.C. 10901] GRANTS AUTHORIZED.

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

SEC. 603. [42 U.S.C. 10902] APPLICATIONS.

(a) Application Required.—A State desiring to participate in the grant program established by this title shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of Applications.—A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this title will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing for the Child Development Associate credential for such individuals; and

(2) not more than 10 percent of the funds received by the State under this title will be used for the costs of administering the program established in such State to award such assistance.

(c) Equitable Distribution.—In making grants under this title, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

SEC. 604. [42 U.S.C. 10903] DEFINITIONS.

For purposes of this title—

(1) the term "eligible individual" means a candidate for the Child Development Associate credential whose income does not exceed the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), by more than 50 percent;

(2) the term "Secretary" means the Secretary of Health and Human Services; and

(3) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

SEC. 605. [42 U.S.C. 10904] ADMINISTRATIVE PROVISIONS.

(a) REPORTING.—Each State receiving grants under this title shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) PAYMENTS.—Payments pursuant to grants made under this title may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

SEC. 606. [42 U.S.C. 10905] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for each of the fiscal years 1987, 1988, 1989, and 1990 for carrying out this title.

* * * * * * *

[*Internal Reference.*—The catchline to title XX has a footnote referring to P.L. 99-425.]

P.L. 99-509, Approved October 21, 1986 (100 Stat. 1874)

Omnibus Budget Reconciliation Act of 1986

* * * * * * *

SEC. 9001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

* * * * * * *

(d) [42 U.S.C. 415 note] EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 9002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

* * * * * * *

(d) [42 U.S.C. 418 note] EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

* * * * * * *

SEC. 9103. REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO PROHIBIT RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES.

* * * * * * *

(b) [42 U.S.C. 666 note] EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by the amendment made by subsection (a), the State plan shall

not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

* * * * * * *

SEC. 9301. CHANGES IN INPATIENT HOSPITAL DEDUCTIBLE.

* * * * * * *

(c) [42 U.S.C. 1395e note] PROMULGATION OF NEW DEDUCTIBLE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the inpatient hospital deductible, the coinsurance amounts for inpatient hospital services and post-hospital extended care services and the monthly part A premiums for 1987, as modified under the amendment made by subsection (a).

SEC. 9302. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

* * * * * * *

(b) * * *

(3) [42 U.S.C. 1395ww note] MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987.—For payments made under section 1886(d) of the Social Security Act for discharges occurring in fiscal year 1987—

(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.

* * * * * * *

(d) * * *

(2) [42 U.S.C. 1395ww note] EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

(3) [42 U.S.C. 1395ww note] BUDGET-NEUTRAL IMPLEMENTATION.—Paragraph (2) and the amendment made by paragraph (1)(A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the classifications required by such paragraph or amendment.

(4) RURAL SECONDARY SPECIALTY DEMONSTRATION PROJECT.—

(A) ESTABLISHMENT.—The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall enter into an agreement with Lake Region Hospital and Nursing Home at Fergus Falls, Minnesota, for the purpose of conducting a rural secondary specialty center demonstration project (in this paragraph referred to as the "project") under title XVIII of the Social Security Act.

(B) PURPOSE.—The purpose of this project shall be to determine the effect that a modified system of making payments under part A of such title to rural secondary specialty centers would have on—

(i) total expenditures under such part, and

(ii) the access of medicare beneficiaries located in rural areas to quality health care.

(C) PAYMENTS.—During the period of the demonstration project, payments under part A of such title shall be made under the project on the basis of average standardized amounts computed for urban areas in the region in which the project is conducted, as adjusted by a rural wage index.

(D) DURATION.—The project shall be of a maximum duration of three years.

(E) REPORTS.—The Secretary shall submit a final report to the Congress on the project not later than six months after the completion of the project.

* * * * * * *

(f) [42 U.S.C. 1395ww note] Promulgation of new rate.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act, for the publication of the payments rates that will apply under section 1886 of the Social Security Act, for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

* * * * * * *

Sec. 9305. Improving quality of care with respect to part A services.

(a) [None assigned.] Refinement of prospective payment system.—

(1) Development of legislative proposal.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) Accounting for severity of illness.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) Deadline.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

* * * * * * *

(d) [None assigned.] Review of standards for medicare conditions of participation for assuring quality of inpatient hospital services.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) Study of payment for administratively necessary days.—

(1) In general.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) Administratively necessary days defined.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) Considerations in conducting study.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) Report on study.—The Secretary shall report to Congress on the results of the study not later than January 1, 1989.

(f) [42 U.S.C. 1395y note] Extending waiver of liability provisions to hospice programs.—

(1) In general.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act, apply (under section 1879(a) of such Act) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and before November 1, 1988.

(g) * * *

(2) [42 U.S.C. 1395pp note] REPORTS.—The Secretary of Health and Human Services shall report to Congress annually in March of 1987 and 1988—

(A) information on the frequency and distribution (by type of provider) of denials of bills for payment under title XVIII of the Social Security Act for extended care services, home health services, and hospice care, by reason of section 1862(a)(1) or (9) of such Act and coverage denials described in section 1879(g) of such Act, including—

(i) the reasons for such denials,

(ii) the extent to which payments were nonetheless made because of section 1879 of such Act, and

(iii) the rate of reversals of such denials, and

(B) such other information as may be appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

* * * * * * *

(h) [42 U.S.C. 1395x note] DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall[1] recommendations for the appropriate use of such instrument or instruments.

* * * * * * *

(k) [42 U.S.C. 1395x note] PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

(3) CONSULTATION AND MONITORING.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

---

[1] As in original.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than February 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

* * * * * * *

SEC. 9307. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) [None assigned.] TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hospice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(b) [None assigned.] MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the State-wide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

* * * * * * *

SEC. 9311. PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) * * *

(3) [42 U.S.C. 1395g note] TRANSITION.—Upon the request of a hospital which—

(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act for inpatient hospital services on a periodic interim payment basis,

(B) requests continuation of payment on such basis, and

(C) is paid through an agency or organization with an agreement under section 1816 of such Act,

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).

* * * * * * *

(d) [42 U.S.C. 1395h note] * * *

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

SEC. 9312. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

* * * * * * *

(c) [42 U.S.C. 1395mm note] * * *

(3) * * *

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

* * * * * * *

(g) [42 U.S.C. 1395mm note] STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) [42 U.S.C. 1395mm note] ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

(i) [42 U.S.C. 1395mm note] USE OF RESERVE FUNDS.—Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 during fiscal year 1986.

SEC. 9313. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

* * * * * * *

(c) * * *

(3) [42 U.S.C. 1320a-7a note] STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than January 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) [42 U.S.C. 1395ll note] STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) develop prototype criteria and standards for defining and measuring quality of care;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

(5) COORDINATION.—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies.

* * * * * * *

SEC. 9315. PAYMENTS FOR HOME HEALTH SERVICES.

* * * * * * *

(b) [42 U.S.C. 1395x note] CONSIDERATIONS IN ESTABLISHING LIMITS.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.

(c) [42 U.S.C. 1395x note] GAO REPORT.—The Comptroller General shall study and report to Congress, not later than February 1, 1988, on—

(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

(2) the appropriateness of the percentage limits established under such section.

* * * * * * *

SEC. 9319. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS.

* * * * * * *

(e) [42 U.S.C. 1395y note] STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY.—The Comptroller General shall study and report to Congress, by not later than March 1, 1990, the impact of the amendments made by this section on access of disabled individuals and members of their family to employment and health insurance. The report shall include information relating to—

(1) the number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member;

(2) the amount of savings to the medicare program achieved annually through this provision; and

(3) the effect on employment, and employment-based health coverage, of disabled individuals and family members.

* * * * * * *

SEC. 9320. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

* * * * * * *

(j) [42 U.S.C. 1395k note] CONSTRUCTION.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

SEC. 9321. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

* * * * * * *

(c) [42 U.S.C. 1395ww note] TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

(d) [42 U.S.C. 1395ww note] LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians.

* * * * * * *

SEC. 9331. PAYMENT FOR PHYSICIANS' SERVICES.

* * * * * * *

(c) [42 U.S.C. 1395u note] MEDICARE ECONOMIC INDEX.—

(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act) shall be 3.2 percent.

(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

* * * * * * *

(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physician's services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

(6) MEI DEFINED.—In this subsection, the term "MEI" means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act.

(d) [42 U.S.C. 1395u note] DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), after public notice and opportunity for public comment and after consultation with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act shall make payments under part B of title XVIII of such Act based on the grouping of procedure codes effected under paragraph (1).

* * * * * * *

SEC. 9332. INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) * * *

(2) [42 U.S.C. 1395u note] MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

* * * * * * *

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during the enrollment period at the end of 1987.

* * * * * * *

SEC. 9333. LIMITS ON REASONABLE CHARGES.

* * * * * * *

(c) [42 U.S.C. 1395u note] REVIEW OF PROCEDURES.—Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).

* * * * * * *

SEC. 9334. PAYMENT FOR CATARACT SURGICAL PROCEDURES.

* * * * * * *

(b) [42 U.S.C. 1395u note] RATIFICATION OF REGULATIONS.—

(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(b)(10) of the Social Security Act (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.

* * * * * * *

SEC. 9335. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) [42 U.S.C. 1395rr note] COMPOSITE RATES FOR DIALYSIS SERVICES.—

(1) IN GENERAL.—Effective with respect to dialysis services provided on or after October 1, 1986, and before October 1, 1988, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00.

* * * * * * *

(b) [42 U.S.C. 1395rr note] REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

* * * * * * *

(d) * * *

(2) [42 U.S.C. 1395rr note] DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than May 1, 1987. The Secretary shall establish network administrative organizations for such areas by not later than July 1, 1987.

(3) [42 U.S.C. 1395rr note] TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

* * * * * * *

(i) * * *

(2) [42 U.S.C. 1395rr note] REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

* * * * * * *

(k) * * *

(2) [42 U.S.C. 1395rr note] DEADLINE.—The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than October 1, 1987.

* * * * * * *

SEC. 9338. SERVICES OF A PHYSICIAN ASSISTANT.

* * * * * * *

(d) [42 U.S.C. 1395x note] REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under title XVIII of the Social Security Act, so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act (for which payment may be made under the amendments made by this section).

(e) [42 U.S.C. 1395x note] STUDY OF PAYMENT RATES.—The Secretary shall report to Congress, by not later than April 1, 1988, concerning adjustments to the amount of payment made, under part B of title XVIII of the Social Security Act, for services described in section 1861(s)(2)(K) of such Act, to ensure that the amount of such payments reflects the approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

* * * * * * *

SEC. 9339. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

* * * * * * *

(b) * * *

(3) [42 U.S.C. 1395l note] REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than April, 1, 1988, on the advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act.

* * * * * * *

(d) [42 U.S.C. 1395l note] STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.—

(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

* * * * * * *

SEC. 9340. [42 U.S.C. 1395u note] PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT.

The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act to payment—

(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.

* * * * * * *

SEC. 9342. [42 U.S.C. 1395b-1 note] ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,
(2) home and community-based services,
(3) mental health services,
(4) outpatient drug therapy,
(5) respite care and other supportive services and counseling for family,
(6) adult day care services, and
(7) other in-home services.

(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

(1) each be conducted over a period of 3 years;

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge;

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.[3]

(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

SEC. 9343. PAYMENTS FOR AMBULATORY SURGERY.

* * * * * * *

(g) [42 U.S.C. 1395u note] REPORTING OF OPD SERVICES USING HCPCS.—Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.

* * * * * * *

SEC. 9344. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) * * *

(2) [42 U.S.C. 1395w-1 note] APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

* * * * * * *

---

[3] As in original. No subsection (e).

(c) [None assigned.] STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secretary of Health and Human Services shall study and report to Congress by July 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security[3], for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

* * * * * * *

SEC. 9353. PRO REVIEW OF QUALITY OF CARE.

(a) * * *

(4) [42 U.S.C. 1320c-3 note] SMALL-AREA ANALYSIS.—The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act, data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act.

* * * * * * *

(6) [42 U.S.C. 1320c-3 note] EFFECTIVE DATES.—(A)(i) Except as provided in clause (ii), the amendments made by paragraphs (1) and (2)(D) shall apply to contracts as of January 1, 1987.

(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

* * * * * * *

SEC. 9412. [None assigned.] WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.

(a) CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.—

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the

---

[3] As in original. "Act" omitted.

Secretary may approve for individuals covered under the demonstration project.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this subsection.

(b) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 10 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985).

(B) In order to receive a waiver under this subsection, an organization must be awarded a grant from the Robert Wood Johnson Foundation.

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

SEC. 9413. [None assigned.] CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

SEC. 9414. [None assigned.] NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under title XIX of the Social Security Act for providing respite care services for elderly and disabled individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization.

(b) CONDITIONS.—The agreement with the Secretary under this section shall—

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act),

(2) provide that if the project imposes any cost sharing requirements on participants who are eligible for benefits under title XIX of the Social Security Act, such requirements shall be imposed only in accordance with the provisions of section 1916 of such Act,

(3) provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

(4) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) DEFINITION.—For purposes of this section, the term "respite care services" shall include—

(1) short-term and intermittent—

(A) companion or sitter services (paid as well as volunteer),

(B) homemaker and personal-care services,

(C) adult day care, and

(D) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual); and

(2) peer support and training for family caregivers (using informal support groups and organized counseling).

(d) PAYMENTS.—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as in[4] additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed $1,000,000 for fiscal year 1987, and $2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

(e) DURATION.—The project under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

(f) REPORTS.—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) PROVISIONS SUBJECT TO WAIVER.—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

SEC. 9415. [None assigned.] INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

* * * * * * *

SEC. 9422. [None assigned.] WAIVER OF CERTAIN REQUIREMENTS.

Notwithstanding the three-month limitation set forth in sections 1902(a)(34) and 1905(a) of the Social Security Act, payment may be made under title XIX of such Act with respect to care and services provided by the Medical University of South Carolina, after September 30, 1984, and before July 1, 1985, to individuals—

(1) who are not described in section 1902(a)(10)(A) of such Act,

(2) who, upon application, would have been eligible as individuals under the age of 18 or pregnant women, for medical assistance under the State plan approved under such title at the time such care and services were provided, and

(3) who, not later than six months after the date of the enactment of this Act, are determined by the State agency administering or supervising the administration of such plan to have been so eligible.

* * * * * * *

SEC. 9432. [42 U.S.C. 1396a note] STATE UTILIZATION REVIEW SYSTEMS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") may not, during the period beginning with the date of the enactment of this Act and ending with the date that is 180 days after the day on which the report required by subsection (b) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

(b) REPORT.—

(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

---

[4] As in original.

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

(D) with respect to each such procedure—

(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan, and

(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

(i) the extent to which such program impedes access to necessary care and services, and

(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

(c) STUDY.—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall report the results of the study to the Congress not later than January 1, 1990.

* * * * * * *

SEC. 9436. [None assigned.] PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) IN GENERAL.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by[5] amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

* * * * * * *

SEC. 9442. [None assigned.] MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,
(B) shelters and residences for pregnant women,
(C) training programs on adoption,
(D) education programs on adoption,
(E) licensed adoption agencies,
(F) State laws relating to adoption,
(G) intercountry adoption, and
(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

* * * * * * *

[*Internal References.*—Social Security Act §§215(i)(4) cites §9001, §1833(l)(3)(B) cites §9320, and §1886(e)(1)(C)(ii) cites §9304 of the Omnibus Budget Reconciliation Act of 1986. Social Security Act §§205(c)(1)(D)(i), (c)(5)(F)(iii), 215(i)(1)(B), (i)(4), (i)(5)(A)(i), 218(d)(6)(A), (d)(6)(F), (d)(8)(D), (e)(1), (f), (g), (h), (i), (j), (k), (l), (m), (q), (r), (s), (t), (w), 224(a)(2)(B), 466(a)(9), 1128A(b)(2), 1154(a)(4)(A), 1816(c)(2)(C), 1833(h)(6), 1842(b)(2), (b)(3)(H)(ii), (b)(3)(end), (b)(4)(E)(ii), (b)(8)(B)(vi), (b)(10)(C), (h)(8), 1845(a)(2), 1861(s)(2)(K)(ii), (v)(1)(L)(ii), 1862(a)(1)(C), (a)(1)(E), (a)(9), 1876(a)(4), (e)(3)(end), (f)(2)(B), (f)(3), (g)(5), 1879(a)(end), (g)(2), 1881(b)(7), (f)(7)(A), 1886(b)(3)(B)(ii), (d)(3)(A), (d)(3)(B), (d)(5)(A)(iv), (d)(5)(C)(i)(I), (d)(5)(C)(i)(II), (d)(5)(F)(vi)(II), (d)(9)(D)(v), (e)(4), (g)(3)(A)(iii), and the catchlines to §§479, 1816, 1817, 1842, 1876, 1879, 1886 and titles XI, Part B (at §1151), XVIII, Part B (at §1831), and XIX have footnotes referring to P.L. 99-509.]

P.L. 99-514, Approved October 22, 1986 (100 Stat. 2085)
Tax Reform Act of 1986

* * * * * * *

SEC. 1883. [None assigned.] TECHNICAL CORRECTIONS IN OTHER PROVISIONS RELATED TO SOCIAL SECURITY ACT PROGRAMS.

* * * * * * *

---

[5] As in original.

(b) * * *

(11)(A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Security Act during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act, shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act.

(B) No State shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent with such provisions) in the administration of the plan during the period specified in subparagraph (A).

* * * * * * *

SEC. 1895. [None assigned.] COBRA TECHNICAL CORRECTIONS RELATING TO SOCIAL SECURITY ACT PROGRAMS.

* * * * * * *

(b) * * *

(16) * * *

(C) For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a)(end) and 404(a)(end) and the catchline to §478 have footnotes referring to P.L. 99-514.]

P.L. 99-570, Approved October 27, 1986 (100 Stat. 3207)

Anti-Drug Abuse Act of 1986

* * * * * * *

SEC. 11005. [42 U.S.C. 602 note] TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER SSI AND MEDICAID PROGRAMS.

* * * * * * *

(d) AFDC.—No later than six months after the date of enactment of this Act and after consultation with the States administering plans under title IV of the Social Security Act, the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

* * * * * * *

[*Internal Reference.*—The catchline to Social Security Act title IV has a footnote referring to P.L. 99-570.]

P.L. 99-576, Approved October 28, 1986 (100 Stat. 3248)

Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

* * * * * * *

SEC. 233. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM.

* * * * * * *

(c) [42 U.S.C. 1395cc note] REPORT.—(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph.

* * * * * * *

[*Internal Reference.*—Social Security Act §1866(a)(1)(L) has a footnote referring to P.L. 99-576.]

P.L. 99-603, Approved November 6, 1986 (100 Stat. 3359)

Immigration Reform and Control Act of 1986

* * * * * * *

SEC. 101. CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS.

* * * * * * *

(e) [8 U.S.C. 1324a note] FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM.—The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act, and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act, a full and complete report on the results of the study together with such recommendations as may be appropriate.

(f) [42 U.S.C. 405 note] COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS.—(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of the enactment of this Act by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

(3) Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.

* * * * * * *

SEC. 121. VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS.

* * * * * * *

(c) EFFECTIVE DATES.—

(1) [42 U.S.C. 1320b-7 note] IMMIGRATION AND NATURALIZATION SERVICE ESTABLISHING VERIFICATION SYSTEM BY OCTOBER 1, 1987.—The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act (as amended by this section) so that the system is available to all the

States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.

* * * * * * *

(3) [42 U.S.C. 1320b-7 note] USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

(4) [42 U.S.C. 1320b-7 note] USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) and information contained in such an application), that—

(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

(D) DEFINITIONS.—In this paragraph:

(i) The term "covered program" means each of the following programs:

(I) The aid to families with dependent children program under part A of title IV of the Social Security Act.

(II) The medicaid program under title XIX of the Social Security Act.

(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act.

(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954.

(V) The food stamp program under the Food Stamp Act of 1977.

(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980.

(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965.

(ii) The term "appropriate Secretary" means, with respect to the covered program described in—

(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

(II) clause (i)(IV), the Secretary of Labor;

(III) clause (i)(V), the Secretary of Agriculture;

(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

(V) clause (i)(VII), the Secretary of Education.

(iii) The term "administering entity" means, with respect to the covered program described in—

(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

(III) clause (i)(VII), an institution of higher education involved.

* * * * * * *

(d) [42 U.S.C. 1320b-7 note] GAO REPORTS.—

(1) REPORT ON CURRENT PILOT PROJECTS.—The Comptroller General shall—

(A) examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and

(B) report, not later than October 1, 1987, to Congress and to the Commissioner of the Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system referred to in subsection (c)(1).

(2) REPORT ON IMPLEMENTATION OF VERIFICATION SYSTEM.—The Comptroller General shall—

(A) monitor and analyze the implementation of such system,

(B) report to Congress and to the appropriate Secretaries described in subsection (c)(4)(D)(ii), by not later than April 1, 1989, on such implementation, and

(C) include in such report such recommendations for changes in the system as may be appropriate.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles I, III, IV, Part A (at §401), X, XIV, XVI (State), and XIX and §§205, 1137(a), (b), (d) and (e) have footnotes referring to P.L. 99-603.]

P.L. 99-643, Approved November 10, 1986 (100 Stat. 3574)
Employment Opportunities for Disabled Americans Act

* * * * * * *

SEC. 6. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

* * * * * * *

(b) [42 U.S.C. 1383e note] STATE DETERMINATIONS.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

* * * * * * *

[*Internal Reference.*—Social Security Act §1634(c)(end) has a footnote referring to P.L. 99-643.]

APPENDIX A

1987 Cost-of-Living Increase and Other Determinations[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 1.3 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal SSI (title XVI) benefit amounts for 1987 to $4,080 for an eligible individual, $6,120 for an eligible individual with an eligible spouse, and $2,040 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1985 to be $16,822.51;

(4) The Social Security contribution and benefit base to be $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1987 to be $460;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1987 to be $680 for beneficiaries age 65 through 69 and $500 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $32,700 for 1987.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1987, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1986 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1985 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1986 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1987 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1987 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1987 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1987 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1987 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 1.3 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 1.3 percent beginning with the December 1986 benefits, which are payable on January 2, 1987. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i) as modified by Pub. L. 99-509).

Under title XVI, Federal SSI payment levels will also increase by 1.3 percent effective for payments made for the month of January 1987 but paid on December 31, 1986. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1987 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1986 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1986, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1986, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1985 through the third quarter of 1986. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1986 benefit increase is not affected by this provision.

---

[1] This material was published in the **Federal Register** on November 5, 1986, at 51 FR 40256, and corrected on November 25, 1986, at 51 FR 42676.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1985, was: for July 1985, 319.1; for August 1985, 319.6; and for September 1985, 320.5. The arithmetical mean for this calendar quarter is 319.7 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1986 was: for July 1986, 322.9; for August 1986, 323.4; and for September 1986, 324.9. The arithmetical mean for this calendar quarter is 323.7. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1986 exceeds that for the calendar quarter ending September 30, 1985 by 1.3 percent, a cost-of-living benefit increase of 1.3 percent is effective for benefits under title II of the Act beginning December 1986.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1987, benefits will increase by 1.3 percent beginning with benefits for December 1986 which will be received in January 1987. In the case of first eligibility after 1986, the 1.3 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 1.3 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1986); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1987, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, Maryland 21235.

Section 215(i)(2)(D) of the Act requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provision described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 1.3 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefits amount of $138.50 for an individual under sections 227 and 228 of the Act is increased by 1.3 percent to obtain the new amount of $140.30. The present monthly benefit amount of $69.40 for a spouse under section 227 is increased by 1.3 percent to $70.30.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 1.3 percent effective January 1987. Therefore, the yearly Federal SSI benefit amount of $4,032 for an eligible individual, $6,048 for an eligible individual with an eligible spouse and $2,016 for an essential person, which are effective January 1986, are increased, effective with January 1987, to $4,080, $6,120, and $2,040 respectively after rounding. The monthly payment amount is determined by dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1985

The determination of the average wage figure for 1985 is based on the 1984 average wage figure of $16,135.07 announced in the **Federal Register** on October 31, 1985 (50 FR 45558), along with the percentage increase in average wages from 1984 to 1985 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $15,250.75 and $15,900.51 for 1984 and 1985, respectively. To determine an average wage figure for 1985 at a level that is consistent with the series of average wages for 1951-1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1984 average wage figure of $16,135.07 by the percentage increase in average wages from 1984 to 1985 (based on the SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1985 = $16,135.07 × $15,900.51 ÷ $15,250.75 = $16,822.51. Therefore, the average wage for 1985 is determined to be $16,822.51.

Contribution and Benefit Base

General. The contribution and benefit base is $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid, and

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1987 shall be equal to the 1986 base of $42,000 multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 contribution and benefit base of $42,000 by the ratio 1.0426053 produces the amount of $43,789.42 which must then be rounded to $43,800. Accordingly, the contribution and benefit base is determined to be $43,800 for 1987.

Quarter of Coverage Amount

General. The 1987 amount of earnings required for a quarter of coverage is $460. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1987 shall be equal to the 1978 amount of $250 multiplied by the ratio of: (1) the average amount, per employee, of total wages for calendar year 1985 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1976, $9,226.48 is 1.823286. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.823286 produces the amount of $455.82 which must then be rounded to $460. Accordingly, the quarter of coverage amount is determined to be $460 for 1987.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1986 was determined by this formula to be $650. Under the formula, the exempt amount of 1987 shall be the 1986 exempt amount multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the average amount of those wages for calendar year 1984. The section further provides that if the amount so determined is not a multiple of $10, it should be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1986 retirement earnings test monthly exempt amount of $650 by the ratio of 1.0426053 produces the amount of $677.69. This must then be rounded to $680. Thus, the retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $680 for 1987. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,160.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly amount for beneficiaries under age 65 is $480 for 1986. The formula provides that the exempt amount for 1987 shall be the 1986 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the average amount of those wages for calendar year 1984. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51, compared to that of 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1986 retirement earnings test monthly exempt amount of $480 by the ratio 1.0426053 produces the amount of $500.45. This must then be rounded to $500. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $500 for 1987. The corresponding retirement earnings test annual exempt amount of these beneficiaries is $6,000.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30732) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed", in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings". We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1987, we divide the average of the total wages for 1985, $16,822.51 by the average of the total wages for each year prior to 1985 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount of 1987.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the 1979 amounts of $180 and $1,085 by 1.720192 produces the amounts of $309.63 and $1,866.41. These must then be rounded to $310 and $1,866. Accordingly, the portions of the average indexed monthly earnings to be used in 1987 are determined to be the first $310, the amount between $310 and $1,866, and the amount over $1,866.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1987, or who die in 1987 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $310 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $310 and through $1,866, plus

(c) 15 percent of the average indexed monthly earnings over $1,866.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long-established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the amounts of $230, $332, and $433 by 1.720192 produces the amounts of $395.64, $571.10, and $744.84. These amounts are then rounded to $396, $571, and $745. Accordingly, the portions of the primary insurance amounts to be used in 1987 are determined to be the first $396, the amount between $396 and $571, the amount between $571 and $745, and the amount over $745.

Consequently, for the family of a worker who becomes age 62 or dies in 1987, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $396 of the worker's primary insurance amounts, plus

(b) 272 percent of the worker's primary insurance amount over $396 through $571, plus

(c) 134 percent of the worker's primary insurance amount over $571 through $745, plus

(d) 175 percent of the worker's primary insurance amount over $745.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General. The 1987 "old-law" contribution and benefit base is $32,700. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payment which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act. (This use is stated in section 230(d) of the Social Security Act.), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1986 base multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year 1985 has been determined to be $16,822.51, as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 "old-law" contribution and benefit base amount of $31,500 by the ratio of 1.0426053 produces the amount of $32,842.07 which must then be rounded to $32,700. Accordingly, the "old-law" contribution and benefit base is determined to be $32,700 for 1987.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of Pub. L. 98-21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) the increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increase for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1986 is defined as the ratio of: (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1986, including advance tax transfers for January 1986 and excluding amounts owed to the Hospital Insurance (HI) Trust Fund, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1986, excluding payments of interest and principal on amounts owed to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1986 (including advance tax transfers for January 1986 and excluding amounts owed to the HI Trust Fund) equaled $47,901 million, and the expenditures are estimated to be $201,802 million. Thus, the OASDI fund ratio for 1986 is 23.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-13.805, and 13.807, Social Security Programs.)

Dated: October 31, 1986.

Otis R. Bowen,
Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1985	No. of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1986	Special minimum maximum family benefit payable for Dec. 1986
19.20	11	19.40	29.20
38.10	12	38.50	58.00
57.20	13	57.90	87.10
76.20	14	77.10	115.90
95.20	15	96.40	144.70
114.40	16	115.80	173.90
133.40	17	135.10	202.70
152.50	18	154.40	231.70
171.50	19	173.70	260.60
190.40	20	192.80	289.40
209.60	21	212.30	318.60
228.60	22	231.50	347.50
247.80	23	251.00	376.70
266.80	24	270.20	405.50
285.70	25	289.40	434.20
305.00	26	308.90	463.60
324.00	27	328.20	492.50
343.00	28	347.40	521.20
361.90	29	366.60	550.20
380.90	30	385.80	579.00

APPENDIX B

Cost-of-Living Increase in Benefits Under Titles II and XVI for 1986; Average of the Total Wages for 1984; Contribution and Benefit Base, Quarter of Coverage Amount, Retirement Earnings Test Exempt Amounts, Formulas for Computing Benefits, and "Old-Law" Contribution and Benefit Base for 1986; Old-Age, Survivors, and Disability Insurance (OASDI) Fund Ratio for 1985; and Tables of Benefit Amounts for 1986[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 3.1 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal SSI (title XVI) benefit amounts for 1986 to $4,032 for an eligible individual, $6,048 for an eligible individual with an eligible spouse, and $2,016 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1984 to be $16,135.07;

(4) The Social Security contribution and benefit base to be $42,000 for remuneration paid in 1986 and self-employment income earned in taxable years beginning in 1986;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1986 to be $440;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1986 to be $650 for beneficiaries age 65 through 69 and $480 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $31,500 for 1986.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1986, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing two tables of OASDI benefit amounts. The first table reflects: (a) The automatic benefit increase, and (b) the new higher average monthly wage and related benefit amounts made possible by the higher contribution and benefit base. This table will be used primarily to compute the title II benefits of workers who attained age 62 or became disabled before 1979, and of the family members of insured workers who died before 1979, and to compute the related maximum family benefit. The second table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1985 the benefit increase percentage and the revised tables of benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1984 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1985 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1986 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1986 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1986 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1986 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1986 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 3.1 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 3.1 percent beginning with the December 1985 benefits, which are payable on January 3, 1986. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI benefit amounts will also increase by 3.1 percent effective for payments made for the month of January 1986 but paid on December 31, 1985. This is based on the authority contained in section 1617 of the Act (42 U.S.C.

---

[1] This material was published in the Federal Register on October 31, 1985, at 50 FR 45558.

1382f). The percentage increase effective January 1986 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1985 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1985, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1985, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1984 through the third quarter of 1985. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1985 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1984, was: for July 1984, 307.5; for August 1984, 310.3; and for September 1984, 312.1. The arithmetical mean for this calendar quarter is 310.0 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1985, was: for July 1985, 319.1; for August 1985, 319.6; and for September 1985, 320.5. The arithmetical mean for this calendar quarter is 319.7 (after rounding to the nearest 0.1). Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1985, exceeds that for the calendar quarter ending September 30, 1984, by 3.1 percent, a cost-of-living benefit increase of 3.1 percent is effective for benefits under title II of the Act beginning December 1985.

Title II Benefit Amounts. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in columns IV and V of the revised benefit table (table 1) were obtained by: (1) increasing by 3.1 percent the corresponding amounts established by the last cost-of-living increase and the extension of the benefit table made under section 215(i)(4) and published on October 31, 1984, at 49 FR 43775, and (2) extending the table due to the increase in the contribution and benefit base for 1986, as described below. The table applies only to the benefits of those persons who attained age 62 or became disabled before January 1979 and the family members of insured workers who died before 1979. The table is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who become eligible (i.e., attain age 62, or become disabled) or die after 1978; their benefits will generally be determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described below. For persons who first become eligible for benefits or who die before age 62 in the period 1979-1985, the 3.1 percent increase will apply beginning with benefits for December 1985 and will be included in checks received in January 1986; the 3.1 percent increase will not apply for persons who first become eligible for benefits or die after 1985.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.1 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to workers who became age 72 before 1969 and are not insured under the usual requirements, and to their spouses or surviving spouses. Section 228 of the Act provides similar benefits for certain uninsured persons who became age 72 before 1972. The current monthly benefit amount of $134.40 for an individual under sections 227 and 228 of the Act is increased by 3.1 percent to obtain the new amount of $138.50. The present monthly benefit amount of $67.40 for a spouse under section 227 is increased by 3.1 percent to $69.40.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 3.1 percent effective January 1986. Therefore, the yearly Federal SSI benefit amount of $3,900 for an eligible individual, $5,856 for an eligible individual with an eligible spouse and $1,956 for an essential person, which are effective January 1985, are increased, effective with January 1986, to $4,032, $6,048, and $2,016, respectively, after rounding. The monthly payment amount is determined dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1984

The determination of the average wage figure for 1984 is based on the 1983 average wage figure of $15,239.24 announced in the **Federal Register** on October 31, 1984 (49 FR 43775), along with the percentage increase in average wages from 1983 to 1984 measured by annual wage data tabulated by the Internal Revenue Service (IRS). The average amounts of wages calculated directly from IRS data were $15,650.18 and $16,570.17 for 1983 and 1984, respectively. To determine an average wage figure for 1984 at a level that is consistent with the series of average wages for 1951-1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1983 average wage figure of $15,239.24 by the percentage increase in average wages from 1983 to 1984 (based on IRS data) as follows (with the result rounded to the nearest cent): Average wage for 1984 = $15,239.24 × $16,570.17 ÷ $15,650.18 = $16,135.07. Therefore, the average wage for 1984 is determined to be $16,135.07.

Contribution and Benefit Base

General. The contribution and benefit base is $42,000 for remuneration paid in 1986 and self-employment income earned in taxable years beginning in 1986.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1986 shall be equal to the 1985 base of $39,600 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1984 to (2) the average amount of those wages for the calendar year 1983. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1983 was previously determined to be $15,239.24. The average wage for calendar year 1984 has been determined to be $16,135.07 as stated herein.

Amount. The ratio of the average for 1984, $16,135.07, compared to that for 1983, $15,239.24, is 1.0587844. Multiplying the 1985 contribution and benefit base of $39,600 by the ratio 1.0587844 produces the amount of $41,927.86 which must then be rounded to $42,000. Accordingly, the contribution and benefit base is determined to be $42,000 for 1986.

Quarter of Coverage Amount

General. The 1986 amount of earnings required for a quarter of coverage is $440. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1986 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1984 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1984 has been determined to be $16,135.07 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1984, $16,135.07, compared to that for 1976, $9,226.48, is 1.748779. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.748779 produces the amount of $437.19 which must then be rounded to $440. Accordingly, the quarter of coverage amount is determined to be $440 for 1986.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over*. Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69*. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1985 was determined by this formula to be $610. Under the formula, the exempt amount for 1986 shall be the 1985 exempt amount multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1984 to (2) the average amount of those wages for calendar year 1983. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1984, $16,135.07, compared to that for 1983, $15,239.24, is 1.0587844.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1985 retirement earnings test monthly exempt amount of $610 by the ratio of 1.0587844 produces the amount of $645.86. This must then be rounded to $650. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is thus determined to be $650 for 1986. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,800.

(c) *Beneficiaries Under Age 65*. Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $450 for 1985. The formula provides that the exempt amount for 1986 shall be the 1985 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1984 to (2) the average amount of those wages for calendar year 1983. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1984, $16,135.07, compared to that of 1983, $15,239.24, is 1.0587844.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1985 retirement earnings test monthly exempt amount of $450 by the ratio 1.0587844 produces the amount of $476.45. This must then be rounded to $480. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $480 for 1986. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $5,760.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877), and July 15, 1982 (47 FR 30731), respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed", in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings". We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1986, we divide the average of the total wages for 1984, $16,135.07, by the average of the total wages for each year prior to 1984 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with higher indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1986.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1986 are obtained by multiplying the 1979 amounts by the ratio of the average of the total wages for 1984, $16,135.07, to that for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1986, the ratio is 1.649897. Multiplying the 1979 amounts of $180 and $1,085 by 1.649897 produces the amounts of $296.98 and $1,790.14. These must then be rounded to $297 and $1,790. Accordingly, the portions of the average indexed monthly earnings to be used in 1986 are determined to be the first $297, the amount between $297 and $1,790, and the amount over $1,790.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1986, or who die in 1986 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $297 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $297 and through $1,790, plus

(c) 15 percent of the average indexed monthly earnings over $1,790.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1986 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1984, $16,135.07, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1986, the ratio is 1.649897. Multiplying the amounts of $230, $332, and $433 by 1.649897 produces the amounts of $379.48, $547.77, and $714.41. These amounts are then rounded to $379, $548, and $714. Accordingly, the portions of the primary insurance amounts to be used in 1986 are determined to be the first $379, the amount between $379 and $548, the amount between $548 and $714, and the amount over $714.

Consequently, for the family of a worker who becomes age 62 or dies in 1986, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $379 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $379 through $548, plus

(c) 134 percent of the worker's primary insurance amount over $548 through $714, plus

(d) 175 percent of the worker's primary insurance amount over $714.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Extension of Benefit Table Effective January 1986

Table 1 includes an extension of the Table for Determining Primary Insurance Amount and Maximum Family Benefits provided in section 215(a)(5) of the Act. This extension reflects the higher average monthly wage and related benefit amounts now possible under the increased contribution and benefit base published by this Notice effective January 1986 in accordance with section 215(i) of the Act. Table 1 will apply primarily to benefits based on earnings of workers who reached age 62 before 1979.

"Old-Law" Contribution and Benefit Base

General. The 1986 "old-law" contribution and benefit base is $31,500. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act. (This use is stated in section 230(d) of the Social Security Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1985 base multiplied by the ratio of: (1) The average amount, per employee, of total wages for the calendar year of 1984 to (2) the average amount of those wages for the calendar year of 1983. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1983 was previously determined to be $15,239.24. The average wage for calendar year 1984 has been determined to be $16,135.07, as stated herein.

Amount. The ratio of the average wage for 1984, $16,135.07 compared to that for 1983, $15,239.24, is 1.0587844. Multiplying the 1985 "old-law" contribution and benefit base amount of $29,700 by the ratio of 1.0587844 produces the amount of $31,445.90 which must then be rounded to $31,500. Accordingly, the "old-law" contribution and benefit base is determined to be $31,500 for 1986.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of the Social Security Amendments of 1983 (Pub. L. 98-21), to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) The increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1985 is defined as the ratio of: (1) The combined assets of the OASI and DI Trust Funds at the beginning of 1985, including advance tax transfers for January 1985 and excluding amounts owed to the Hospital Insurance (HI) Trust Fund, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1985, excluding payments of interest and principal on amounts owed to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1985 (including advance tax transfers for January 1985 and excluding amounts owed to the

HI Trust Fund) equaled $33,956 million, and the expenditures are estimated to be $191,569 million. Thus, the OASDI fund ratio for 1985 is 17.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1985.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-13.805, and 13.807 Social Security Programs)

Dated: October 29, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
	$16.20	$195.90		$76	$201.90	$303.00
$16.21	16.84	199.00	$77	78	205.10	307.70
16.85	17.60	203.60	79	80	209.90	314.90
17.61	18.40	207.20	81	81	213.60	320.70
18.41	19.24	210.80	82	83	217.30	326.30
19.25	20.00	215.30	84	85	221.90	333.30
20.01	20.64	219.50	86	87	226.30	339.50
20.65	21.28	222.80	88	89	229.70	344.70
21.29	21.88	227.30	90	90	234.30	351.60
21.89	22.28	231.20	91	92	238.30	357.70
22.29	22.68	234.90	93	94	242.10	363.40
22.69	23.08	238.80	95	96	246.20	369.50
23.09	23.44	243.10	97	97	250.60	376.10
23.45	23.76	247.10	98	99	254.70	382.20
23.77	24.20	252.00	100	101	259.80	389.70
24.21	24.60	255.40	102	102	263.30	395.10
24.61	25.00	259.60	103	104	267.60	401.50
25.01	25.48	264.50	105	106	272.60	409.20
25.49	25.92	268.80	107	107	277.10	415.90
25.93	26.40	273.00	108	109	281.40	422.10
26.41	26.94	277.20	110	113	285.70	428.70
26.95	27.46	281.10	114	118	289.80	434.80
27.47	28.00	285.40	119	122	294.20	441.30
28.01	28.68	289.90	123	127	298.80	448.40
28.69	29.25	294.20	128	132	303.30	454.90
29.26	29.68	298.10	133	136	307.30	461.20
29.69	30.36	302.20	137	141	311.50	467.50
30.37	30.92	306.60	142	146	316.10	474.10
30.93	31.36	311.20	147	150	320.80	481.20
31.37	32.00	314.70	151	155	324.40	486.80
32.01	32.60	319.40	156	160	329.30	494.00

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
32.61	33.20	323.60	161	164	333.60	500.50
33.21	33.88	327.60	165	169	337.70	506.80
33.89	34.50	332.10	170	174	342.30	513.70
34.51	35.00	336.10	175	178	346.50	519.90
35.01	35.80	340.70	179	183	351.20	526.80
35.81	36.40	344.60	184	188	355.20	533.00
36.41	37.08	349.20	189	193	360.00	540.20
37.09	37.60	353.40	194	197	364.30	546.70
37.61	38.20	357.50	198	202	368.50	553.10
38.21	39.12	362.30	203	207	373.50	560.20
39.13	39.68	366.30	208	211	377.60	566.70
39.69	40.33	369.70	212	216	381.10	571.80
40.34	41.12	374.40	217	221	386.00	579.10
41.13	41.76	378.70	222	225	390.40	585.80
41.77	42.44	383.30	226	230	395.10	592.90
42.45	43.20	387.50	231	235	399.50	599.50
43.21	43.76	392.20	236	239	404.30	606.70
43.77	44.44	395.80	240	244	408.00	614.80
44.45	44.88	399.70	245	249	412.00	627.60
44.89	45.60	404.70	250	253	417.20	637.90
		408.60	254	258	421.20	650.30
		412.20	259	263	424.90	662.70
		417.40	264	267	430.30	672.70
		421.10	268	272	434.10	685.50
		425.70	273	277	438.80	697.70
		429.80	278	281	443.10	707.80
		434.00	282	286	447.40	720.50
		438.70	287	291	452.20	733.30
		442.20	292	295	455.90	743.10
		447.10	296	300	460.90	755.60
		451.20	301	305	465.10	768.60
		455.00	306	309	469.10	778.50
		459.70	310	314	473.90	790.90
		463.40	315	319	477.70	803.70
		467.70	320	323	482.10	813.60
		472.10	324	328	486.70	826.20
		476.10	329	333	490.80	838.80
		481.10	334	337	496.00	849.20
		484.40	338	342	499.40	861.50
		489.00	343	347	504.10	874.10
		493.60	348	351	508.90	884.10
		497.30	352	356	512.70	896.70
		502.20	357	361	517.70	909.40
		506.10	362	365	521.70	919.40

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		510.00	366	370	525.80	932.00
		514.70	371	375	530.60	944.20
		518.90	376	379	534.90	954.80
		523.30	380	384	539.50	967.40
		527.20	385	389	543.50	979.80
		531.20	390	393	547.60	989.70
		536.00	394	398	552.60	1002.60
		540.00	399	403	556.70	1015.10
		544.60	404	407	561.40	1025.00
		548.30	408	412	565.20	1037.80
		552.10	413	417	569.20	1050.10
		556.00	418	421	573.20	1060.20
		560.50	422	426	577.80	1072.90
		564.30	427	431	581.70	1085.50
		567.80	432	436	585.40	1098.20
		572.50	437	440	590.20	1103.00
		576.00	441	445	593.80	1109.70
		580.00	446	450	597.90	1115.70
		584.10	451	454	602.20	1120.50
		588.10	455	459	606.30	1126.80
		591.90	460	464	610.20	1132.90
		595.60	465	468	614.00	1138.40
		600.40	469	473	619.00	1144.50
		603.70	474	478	622.40	1150.90
		607.50	479	482	626.30	1156.00
		611.70	483	487	630.60	1162.50
		615.90	488	492	634.90	1168.80
		619.50	493	496	638.70	1173.80
		624.00	497	501	643.30	1179.70
		627.60	502	506	647.00	1186.00
		631.40	507	510	650.90	1191.20
		635.30	511	515	654.90	1197.50
		639.80	516	520	659.60	1204.10
		643.40	521	524	663.30	1208.80
		647.10	525	529	667.10	1215.20
		651.90	530	534	672.10	1221.40
		655.20	535	538	675.50	1226.40
		659.30	539	543	679.70	1232.80
		663.30	544	548	683.80	1239.10
		667.50	549	553	688.10	1245.40
		671.10	554	556	691.90	1249.00
		674.40	557	560	695.30	1254.20
		678.10	561	563	699.10	1258.00
		681.50	564	567	702.60	1263.10

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		685.60	568	570	706.80	1266.60
		688.80	571	574	710.10	1271.70
		692.30	575	577	713.70	1275.80
		695.50	578	581	717.00	1280.50
		699.10	582	584	720.70	1284.50
		702.10	585	588	723.80	1289.40
		706.30	589	591	728.10	1293.10
		709.80	592	595	731.80	1298.20
		713.30	596	598	735.40	1301.60
		716.80	599	602	739.00	1307.20
		720.20	603	605	742.50	1310.80
		723.60	606	609	746.00	1315.50
		727.30	610	612	749.80	1319.60
		730.80	613	616	753.40	1324.60
		734.20	617	620	756.90	1329.70
		737.90	621	623	760.70	1333.30
		741.10	624	627	764.00	1338.60
		744.80	628	630	767.80	1343.20
		748.30	631	634	771.40	1349.80
		751.90	635	637	775.20	1356.10
		755.50	638	641	778.90	1362.60
		758.80	642	644	782.30	1368.70
		762.40	645	648	786.00	1375.30
		765.70	649	652	789.40	1381.40
		768.00	653	656	791.80	1385.40
		770.20	657	660	794.00	1389.10
		772.90	661	665	796.80	1394.40
		775.60	666	670	799.60	1399.40
		778.50	671	675	802.60	1404.00
		781.40	676	680	805.60	1409.10
		784.00	681	685	808.30	1414.10
		787.10	686	690	811.50	1418.80
		789.40	691	695	813.80	1424.40
		792.00	696	700	816.50	1429.00
		795.00	701	705	819.60	1434.10
		797.80	706	710	822.50	1439.20
		800.80	711	715	825.60	1443.90
		803.40	716	720	828.30	1449.10
		806.20	721	725	831.10	1454.00
		809.10	726	730	834.10	1459.20
		811.80	731	735	836.90	1464.30
		814.70	736	740	839.90	1469.00
		817.30	741	745	842.60	1474.40
		819.70	746	750	845.10	1478.90

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		822.50	751	755	847.90	1483.60
		824.80	756	760	850.30	1487.50
		827.20	761	765	852.80	1491.80
		829.10	766	770	854.80	1496.10
		831.70	771	775	857.40	1500.10
		834.00	776	780	859.80	1504.20
		836.40	781	785	862.30	1508.40
		838.40	786	790	864.30	1512.50
		840.70	791	795	866.70	1516.70
		843.20	796	800	869.30	1520.90
		845.50	801	805	871.70	1525.20
		847.90	806	810	874.10	1529.20
		850.10	811	815	876.40	1533.70
		852.50	816	820	878.90	1537.60
		854.80	821	825	881.20	1541.90
		857.10	826	830	883.60	1545.90
		859.30	831	835	885.90	1550.40
		861.60	836	840	888.30	1554.20
		864.00	841	845	890.70	1558.80
		866.10	846	850	892.90	1562.40
		868.60	851	855	895.50	1566.90
		870.90	856	860	897.80	1571.00
		873.20	861	865	900.20	1575.20
		875.70	866	870	902.80	1579.40
		877.80	871	875	905.00	1583.60
		880.10	876	880	907.30	1587.60
		882.50	881	885	909.80	1592.00
		884.70	886	890	912.10	1595.80
		886.90	891	895	914.30	1600.70
		889.30	896	900	916.80	1604.30
		891.80	901	905	919.40	1608.60
		894.10	906	910	921.80	1612.90
		896.40	911	915	924.10	1617.10
		899.00	916	920	926.80	1620.90
		900.90	921	925	928.80	1625.50
		903.10	926	930	931.00	1629.30
		905.40	931	935	933.40	1633.60
		907.90	936	940	936.00	1637.80
		910.10	941	945	938.30	1642.00
		912.40	946	950	940.60	1646.00
		914.90	951	955	943.20	1650.50
		917.50	956	960	945.90	1654.60
		919.80	961	965	948.30	1658.50
		921.50	966	970	950.00	1663.00

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		923.90	971	975	952.50	1667.20
		926.20	976	980	954.90	1671.10
		928.90	981	985	957.60	1675.20
		930.90	986	990	959.70	1679.40
		933.20	991	995	962.10	1683.80
		935.70	996	1000	964.70	1687.70
		937.90	1001	1005	966.90	1691.30
		939.40	1006	1010	968.50	1695.30
		941.80	1011	1015	970.90	1698.80
		944.10	1016	1020	973.30	1703.00
		946.00	1021	1025	975.30	1706.40
		947.70	1026	1030	977.00	1710.40
		950.20	1031	1035	979.60	1714.10
		952.20	1036	1040	981.70	1717.70
		954.20	1041	1045	983.70	1721.70
		956.60	1046	1050	986.20	1725.20
		958.30	1051	1055	988.00	1728.60
		960.30	1056	1060	990.00	1733.00
		962.70	1061	1065	992.50	1736.50
		964.80	1066	1070	994.70	1740.30
		966.70	1071	1075	996.60	1744.20
		968.80	1076	1080	998.80	1747.80
		971.10	1081	1085	1001.20	1751.50
		972.90	1086	1090	1003.00	1755.20
		975.10	1091	1095	1005.30	1759.10
		977.40	1096	1100	1007.60	1763.10
		979.10	1101	1105	1009.40	1766.50
		981.30	1106	1110	1011.70	1770.40
		983.50	1111	1115	1013.90	1773.90
		985.50	1116	1120	1016.00	1778.00
		987.70	1121	1125	1018.30	1781.50
		989.60	1126	1130	1020.20	1785.30
		991.70	1131	1135	1022.40	1788.80
		993.90	1136	1140	1024.70	1793.10
		996.10	1141	1145	1026.90	1796.80
		998.20	1146	1150	1029.10	1800.40
		999.90	1151	1155	1030.80	1803.90
		1002.20	1156	1160	1033.20	1807.70
		1004.40	1161	1165	1035.50	1811.70
		1006.40	1166	1170	1037.50	1815.50
		1008.60	1171	1175	1039.80	1819.30
		1010.50	1176	1180	1041.80	1823.00
		1012.30	1181	1185	1043.60	1826.30
		1014.40	1186	1190	1045.80	1829.70

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1016.10	1191	1195	1047.50	1833.40
		1018.10	1196	1200	1049.60	1836.90
		1020.10	1201	1205	1051.70	1840.20
		1022.00	1206	1210	1053.60	1843.90
		1023.90	1211	1215	1055.60	1847.20
		1025.80	1216	1220	1057.50	1850.70
		1027.80	1221	1225	1059.60	1854.00
		1029.90	1226	1230	1061.80	1857.70
		1031.60	1231	1235	1063.50	1861.00
		1033.40	1236	1240	1065.40	1864.60
		1035.60	1241	1245	1067.70	1868.20
		1037.50	1246	1250	1069.60	1871.60
		1039.30	1251	1255	1071.50	1875.00
		1041.30	1256	1260	1073.50	1878.60
		1043.30	1261	1265	1075.60	1882.10
		1045.20	1266	1270	1077.60	1885.50
		1047.00	1271	1275	1079.40	1888.70
		1048.90	1276	1280	1081.40	1892.50
		1050.60	1281	1285	1083.10	1895.50
		1052.50	1286	1290	1085.10	1898.80
		1054.50	1291	1295	1087.10	1902.00
		1056.20	1296	1300	1088.90	1905.30
		1057.90	1301	1305	1090.60	1908.60
		1059.70	1306	1310	1092.50	1911.90
		1061.50	1311	1315	1094.40	1915.10
		1063.60	1316	1320	1096.50	1918.60
		1065.30	1321	1325	1098.30	1921.60
		1067.10	1326	1330	1100.10	1925.20
		1068.80	1331	1335	1101.90	1928.40
		1070.70	1336	1340	1103.80	1931.70
		1072.50	1341	1345	1105.70	1934.90
		1074.30	1346	1350	1107.60	1938.10
		1076.10	1351	1355	1109.40	1941.30
		1077.90	1356	1360	1111.30	1944.60
		1079.90	1361	1365	1113.30	1947.80
		1081.40	1366	1370	1114.90	1951.20
		1083.30	1371	1375	1116.80	1954.40
		1085.30	1376	1380	1118.90	1957.70
		1086.80	1381	1385	1120.40	1960.70
		1088.60	1386	1390	1122.30	1963.90
		1090.20	1391	1395	1123.90	1967.00
		1091.80	1396	1400	1125.60	1970.10
		1093.60	1401	1405	1127.50	1973.00
		1095.20	1406	1410	1129.10	1976.20

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1096.90	1411	1415	1130.90	1979.30
		1098.60	1416	1420	1132.60	1982.50
		1100.40	1421	1425	1134.50	1985.60
		1102.00	1426	1430	1136.10	1988.60
		1104.00	1431	1435	1138.20	1991.60
		1105.70	1436	1440	1139.90	1994.70
		1107.30	1441	1445	1141.60	1997.70
		1109.20	1446	1450	1143.50	2001.10
		1110.70	1451	1455	1145.10	2004.00
		1112.40	1456	1460	1146.80	2007.20
		1114.20	1461	1465	1148.70	2010.20
		1115.80	1466	1470	1150.30	2013.30
		1117.50	1471	1475	1152.10	2016.40
		1119.10	1476	1480	1153.70	2019.20
		1121.00	1481	1485	1155.70	2022.30
		1122.40	1486	1490	1157.10	2024.90
		1124.20	1491	1495	1159.00	2028.00
		1125.60	1496	1500	1160.40	2030.90
		1127.30	1501	1505	1162.20	2034.00
		1128.80	1506	1510	1163.70	2036.60
		1130.50	1511	1515	1165.50	2039.50
		1132.10	1516	1520	1167.10	2042.50
		1133.70	1521	1525	1168.80	2045.60
		1135.20	1526	1530	1170.30	2048.10
		1136.90	1531	1535	1172.10	2051.10
		1138.60	1536	1540	1173.80	2054.10
		1140.10	1541	1545	1175.40	2057.00
		1141.80	1546	1550	1177.10	2059.80
		1143.40	1551	1555	1178.80	2062.80
		1145.00	1556	1560	1180.40	2065.70
		1146.50	1561	1565	1182.00	2068.70
		1148.20	1566	1570	1183.70	2071.30
		1149.70	1571	1575	1185.30	2074.40
		1151.30	1576	1580	1186.90	2077.30
		1152.90	1581	1585	1188.60	2080.20
		1154.60	1586	1590	1190.30	2083.00
		1156.10	1591	1595	1191.90	2086.10
		1157.80	1596	1600	1193.60	2089.00
		1159.40	1601	1605	1195.30	2091.80
		1161.00	1606	1610	1196.90	2094.50
		1162.50	1611	1615	1198.50	2097.60
		1164.20	1616	1620	1200.20	2100.40
		1165.80	1621	1625	1201.90	2103.40
		1167.50	1626	1630	1203.60	2106.20

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1169.20	1631	1635	1205.40	2109.30
		1170.60	1636	1640	1206.80	2112.00
		1172.40	1641	1645	1208.70	2115.00
		1174.00	1646	1650	1210.30	2117.80
		1175.60	1651	1655	1212.00	2120.80
		1177.20	1656	1660	1213.60	2123.60
		1178.70	1661	1665	1215.20	2126.50
		1180.40	1666	1670	1216.90	2129.40
		1181.90	1671	1675	1218.50	2132.40
		1183.60	1676	1680	1220.20	2135.30
		1185.20	1681	1685	1221.90	2138.20
		1186.80	1686	1690	1223.50	2141.00
		1188.40	1691	1695	1225.20	2144.00
		1189.80	1696	1700	1226.60	2146.90
		1191.50	1701	1705	1228.40	2149.90
		1193.00	1706	1710	1229.90	2152.70
		1194.70	1711	1715	1231.70	2155.60
		1196.20	1716	1720	1233.20	2158.30
		1197.90	1721	1725	1235.00	2161.40
		1199.50	1726	1730	1236.60	2164.10
		1201.10	1731	1735	1238.30	2167.10
		1202.80	1736	1740	1240.00	2169.90
		1204.30	1741	1745	1241.60	2173.00
		1205.90	1746	1750	1243.20	2175.80
		1207.50	1751	1755	1244.90	2178.80
		1209.10	1756	1760	1246.50	2181.60
		1210.80	1761	1765	1248.30	2184.70
		1212.30	1766	1770	1249.80	2187.30
		1213.90	1771	1775	1251.50	2190.30
		1215.60	1776	1780	1253.20	2193.30
		1217.10	1781	1785	1254.80	2196.40
		1218.90	1786	1790	1256.60	2198.90
		1220.40	1791	1795	1258.20	2201.90
		1222.10	1796	1800	1259.90	2204.80
		1223.60	1801	1805	1261.50	2207.80
		1225.30	1806	1810	1263.20	2210.60
		1226.80	1811	1815	1264.80	2213.60
		1228.50	1816	1820	1266.50	2216.50
		1229.90	1821	1825	1268.00	2219.50
		1231.70	1826	1830	1269.80	2222.10
		1233.30	1831	1835	1271.50	2225.20
		1234.90	1836	1840	1273.10	2228.10
		1236.60	1841	1845	1274.90	2231.10
		1238.00	1846	1850	1276.30	2233.60

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1239.80	1851	1855	1278.20	2236.70
		1241.20	1856	1860	1279.60	2239.60
		1243.00	1861	1865	1281.50	2242.60
		1244.50	1866	1870	1283.00	2245.30
		1246.10	1871	1875	1284.70	2248.40
		1247.70	1876	1880	1286.30	2251.20
		1249.30	1881	1885	1288.00	2254.20
		1251.00	1886	1890	1289.70	2257.00
		1252.50	1891	1895	1291.30	2260.10
		1254.20	1896	1900	1293.00	2262.90
		1255.80	1901	1905	1294.70	2265.90
		1257.30	1906	1910	1296.20	2268.60
		1258.90	1911	1915	1297.90	2271.30
		1260.30	1916	1920	1299.30	2274.00
		1261.70	1921	1925	1300.80	2276.60
		1263.20	1926	1930	1302.30	2279.40
		1264.70	1931	1935	1303.90	2281.90
		1266.20	1936	1940	1305.40	2284.70
		1267.60	1941	1945	1306.80	2287.20
		1269.20	1946	1950	1308.50	2289.90
		1270.60	1951	1955	1309.90	2292.40
		1272.00	1956	1960	1311.40	2295.30
		1273.50	1961	1965	1312.90	2297.70
		1275.00	1966	1970	1314.50	2300.50
		1276.50	1971	1975	1316.00	2302.90
		1277.80	1976	1980	1317.40	2305.70
		1279.50	1981	1985	1319.10	2308.40
		1280.80	1986	1990	1320.50	2311.00
		1282.10	1991	1995	1321.80	2313.50
		1283.70	1996	2000	1323.40	2316.30
		1285.10	2001	2005	1324.90	2318.80
		1286.70	2006	2010	1326.50	2321.60
		1288.00	2011	2015	1327.90	2324.10
		1289.70	2016	2020	1329.60	2326.80
		1291.00	2021	2025	1331.00	2329.50
		1292.50	2026	2030	1332.50	2332.20
		1293.90	2031	2035	1334.00	2334.50
		1295.50	2036	2040	1335.60	2337.30
		1296.90	2041	2045	1337.10	2339.80
		1298.40	2046	2050	1338.60	2342.70
		1299.90	2051	2055	1340.10	2345.30
		1301.40	2056	2060	1341.70	2347.90
		1302.60	2061	2065	1342.90	2350.30
		1304.20	2066	2070	1344.60	2353.20

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1305.60	2071	2075	1346.00	2355.70
		1307.20	2076	2080	1347.70	2358.50
		1308.50	2081	2085	1349.00	2361.00
		1310.10	2086	2090	1350.70	2363.80
		1311.50	2091	2095	1352.10	2366.30
		1312.80	2096	2100	1353.40	2369.10
		1314.40	2101	2105	1355.10	2371.50
		1315.80	2106	2110	1356.50	2374.30
		1317.40	2111	2115	1358.20	2376.80
		1318.70	2116	2120	1359.50	2379.60
		1320.30	2121	2125	1361.20	2382.10
		1321.70	2126	2130	1362.60	2384.90
		1323.30	2131	2135	1364.30	2387.40
		1324.60	2136	2140	1365.60	2390.20
		1326.00	2141	2145	1367.10	2392.60
		1327.60	2146	2150	1368.70	2395.50
		1329.00	2151	2155	1370.10	2398.00
		1330.40	2156	2160	1371.60	2400.60
		1331.90	2161	2165	1373.10	2403.10
		1333.10	2166	2170	1374.40	2405.30
		1334.50	2171	2175	1375.80	2407.70
		1335.70	2176	2180	1377.10	2409.90
		1337.00	2181	2185	1378.40	2412.40
		1338.20	2186	2190	1379.60	2414.70
		1339.40	2191	2195	1380.90	2416.80
		1340.80	2196	2200	1382.30	2419.20
		1342.00	2201	2205	1383.60	2421.60
		1343.40	2206	2210	1385.00	2423.90
		1344.60	2211	2215	1386.20	2426.10
		1345.90	2216	2220	1387.60	2428.50
		1347.20	2221	2225	1388.90	2430.80
		1348.50	2226	2230	1390.30	2433.20
		1349.80	2231	2235	1391.60	2435.40
		1351.00	2236	2240	1392.80	2437.50
		1352.20	2241	2245	1394.10	2440.00
		1353.60	2246	2250	1395.50	2442.20
		1354.90	2251	2255	1396.90	2444.60
		1356.20	2256	2260	1398.20	2446.80
		1357.50	2261	2265	1399.50	2449.30
		1358.70	2266	2270	1400.80	2451.50
		1359.90	2271	2275	1402.00	2453.70
		1361.20	2276	2280	1403.30	2456.10
		1362.50	2281	2285	1404.70	2458.50
		1363.90	2286	2290	1406.10	2460.70

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1365.20	2291	2295	1407.50	2463.00
		1366.40	2296	2300	1408.70	2465.40
		1367.60	2301	2305	1409.90	2467.80
		1368.90	2306	2310	1411.30	2470.00
		1370.20	2311	2315	1412.60	2472.30
		1371.50	2316	2320	1414.00	2474.60
		1372.80	2321	2325	1415.30	2477.00
		1373.90	2326	2330	1416.40	2479.20
		1375.40	2331	2335	1418.00	2481.60
		1376.60	2336	2340	1419.20	2483.80
		1377.90	2341	2345	1420.60	2486.20
		1379.20	2346	2350	1421.90	2488.50
		1380.50	2351	2355	1423.20	2490.90
		1381.70	2356	2360	1424.50	2493.10
		1382.90	2361	2365	1425.70	2495.40
		1384.30	2366	2370	1427.20	2497.70
		1385.60	2371	2375	1428.50	2500.00
		1387.00	2376	2380	1429.90	2502.30
		1388.10	2381	2385	1431.10	2504.60
		1389.30	2386	2390	1432.30	2506.90
		1390.70	2391	2395	1433.80	2509.30
		1391.90	2396	2400	1435.00	2511.40
		1393.30	2401	2405	1436.40	2513.80
		1394.50	2406	2410	1437.70	2516.10
		1395.90	2411	2415	1439.10	2518.60
		1397.10	2416	2420	1440.40	2520.60
		1398.30	2421	2425	1441.60	2523.10
		1399.70	2426	2430	1443.00	2525.40
		1400.90	2431	2435	1444.30	2527.90
		1402.20	2436	2440	1445.60	2529.90
		1403.40	2441	2445	1446.90	2532.30
		1404.70	2446	2450	1448.20	2534.70
		1406.00	2451	2455	1449.50	2537.00
		1407.30	2456	2460	1450.90	2539.20
		1408.70	2461	2465	1452.30	2541.60
		1409.80	2466	2470	1453.50	2543.90
		1411.20	2471	2475	1454.90	2546.20
		1412.30	2476	2480	1456.00	2548.20
		1413.40	2481	2485	1457.20	2550.40
		1414.60	2486	2490	1458.40	2552.40
		1415.70	2491	2495	1459.50	2554.50
		1416.90	2496	2500	1460.80	2556.60
		1418.10	2501	2505	1462.00	2558.70
		1419.10	2506	2510	1463.00	2560.60

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1420.40	2511	2515	1464.40	2562.80
		1421.50	2516	2520	1465.50	2564.90
		1422.70	2521	2525	1466.80	2566.90
		1423.80	2526	2530	1467.90	2569.00
		1424.90	2531	2535	1469.00	2571.20
		1426.10	2536	2540	1470.30	2573.20
		1427.30	2541	2545	1471.50	2575.30
		1428.40	2546	2550	1472.60	2577.30
		1429.60	2551	2555	1473.90	2579.50
		1430.70	2556	2560	1475.00	2581.50
		1431.90	2561	2565	1476.20	2583.50
		1433.00	2566	2570	1477.40	2585.70
		1434.10	2571	2575	1478.50	2587.80
		1435.40	2576	2580	1479.80	2589.70
		1436.50	2581	2585	1481.00	2592.00
		1437.60	2586	2590	1482.10	2593.90
		1438.80	2591	2595	1483.40	2596.00
		1439.90	2596	2600	1484.50	2598.10
		1441.00	2601	2605	1485.60	2600.20
		1442.20	2606	2610	1486.90	2602.20
		1443.40	2611	2615	1488.10	2604.40
		1444.60	2616	2620	1489.30	2606.40
		1445.60	2621	2625	1490.40	2608.50
		1446.80	2626	2630	1491.60	2610.50
		1448.00	2631	2635	1492.80	2612.80
		1449.20	2636	2640	1494.10	2614.70
		1450.20	2641	2645	1495.10	2616.80
		1451.40	2646	2650	1496.30	2618.70
		1452.60	2651	2655	1497.60	2621.00
		1453.80	2656	2660	1498.80	2623.00
		1454.80	2661	2665	1499.80	2625.10
		1456.00	2666	2670	1501.10	2627.10
		1457.20	2671	2675	1502.30	2629.30
		1458.40	2676	2680	1503.60	2631.30
		1459.40	2681	2685	1504.60	2633.40
		1460.60	2686	2690	1505.80	2635.50
		1461.80	2691	2695	1507.10	2637.60
		1463.00	2696	2700	1508.30	2639.50
		1464.10	2701	2705	1509.40	2641.60
		1465.10	2706	2710	1510.50	2643.40
		1466.20	2711	2715	1511.60	2645.40
		1467.30	2716	2720	1512.70	2647.20
		1468.30	2721	2725	1513.80	2649.20
		1469.40	2726	2730	1514.90	2651.20

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1470.50	2731	2735	1516.00	2653.10
		1471.50	2736	2740	1517.10	2655.00
		1472.70	2741	2745	1518.30	2657.00
		1473.70	2746	2750	1519.30	2658.90
		1474.70	2751	2755	1520.40	2660.90
		1475.90	2756	2760	1521.60	2662.70
		1476.90	2761	2765	1522.60	2664.80
		1477.90	2766	2770	1523.70	2666.60
		1479.10	2771	2775	1524.90	2668.60
		1480.10	2776	2780	1525.90	2670.40
		1481.10	2781	2785	1527.00	2672.40
		1482.30	2786	2790	1528.20	2674.40
		1483.30	2791	2795	1529.20	2676.30
		1484.50	2796	2800	1530.50	2678.20
		1485.50	2801	2805	1531.50	2680.20
		1486.50	2806	2810	1532.50	2682.10
		1487.70	2811	2815	1533.80	2684.10
		1488.70	2816	2820	1534.80	2686.00
		1489.70	2821	2825	1535.80	2687.90
		1490.90	2826	2830	1537.10	2689.80
		1491.90	2831	2835	1538.10	2691.80
		1492.90	2836	2840	1539.10	2693.60
		1494.10	2841	2845	1540.40	2695.70
		1495.10	2846	2850	1541.40	2697.50
		1496.10	2851	2855	1542.40	2699.50
		1497.30	2856	2860	1543.70	2701.50
		1498.30	2861	2865	1544.70	2703.30
		1499.40	2866	2870	1545.80	2705.30
		1500.50	2871	2875	1547.00	2707.10
		1501.50	2876	2880	1548.00	2709.10
		1502.60	2881	2885	1549.10	2711.20
		1503.70	2886	2890	1550.30	2712.90
		1504.70	2891	2895	1551.30	2715.00
		1505.90	2896	2900	1552.50	2716.90
		1506.90	2901	2905	1553.60	2718.80
		1507.90	2906	2910	1554.60	2720.80
		1509.10	2911	2915	1555.80	2722.70
		1510.10	2916	2920	1556.90	2724.60
		1511.20	2921	2925	1558.00	2726.60
		1512.30	2926	2930	1559.10	2728.40
		1513.30	2931	2935	1560.20	2730.50
		1514.40	2936	2940	1561.30	2732.30
		1515.50	2941	2945	1562.40	2734.30
		1516.50	2946	2950	1563.50	2736.20

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1517.60	2951	2955	1564.60	2738.20
		1518.70	2956	2960	1565.70	2740.00
		1519.70	2961	2965	1566.80	2742.10
		1520.80	2966	2970	1567.90	2744.00
		1521.90	2971	2975	1569.00	2745.90
		1523.00	2976	2980	1570.20	2747.80
		1524.00	2981	2985	1571.20	2749.50
		1525.00	2986	2990	1572.20	2751.50
		1526.10	2991	2995	1573.40	2753.30
		1527.10	2996	3000	1574.40	2755.20
		1528.10	3001	3005	1575.40	2757.10
		1529.20	3006	3010	1576.60	2758.90
		1530.20	3011	3015	1577.60	2760.80
		1531.20	3016	3020	1578.60	2762.70
		1532.30	3021	3025	1579.80	2764.50
		1533.30	3026	3030	1580.80	2766.40
		1534.30	3031	3035	1581.80	2768.30
		1535.40	3036	3040	1582.90	2770.10
		1536.40	3041	3045	1584.00	2772.00
		1537.40	3046	3050	1585.00	2773.90
		1538.50	3051	3055	1586.10	2775.70
		1539.50	3056	3060	1587.20	2777.70
		1540.50	3061	3065	1588.20	2779.40
		1541.60	3066	3070	1589.30	2781.40
		1542.60	3071	3075	1590.40	2783.10
		1543.70	3076	3080	1591.50	2785.10
		1544.70	3081	3085	1592.50	2786.90
		1545.70	3086	3090	1593.60	2788.80
		1546.80	3091	3095	1594.70	2790.70
		1547.80	3096	3100	1595.70	2792.50
		1548.80	3101	3105	1596.80	2794.40
		1549.90	3106	3110	1597.90	2796.30
		1550.90	3111	3115	1598.90	2798.10
		1551.90	3116	3120	1600.00	2800.00
		1553.00	3121	3125	1601.10	2801.90
		1554.00	3126	3130	1602.10	2803.80
		1555.00	3131	3135	1603.20	2805.60
		1556.10	3136	3140	1604.30	2807.50
		1557.10	3141	3145	1605.30	2809.30
		1558.10	3146	3150	1606.40	2811.30
		1559.10	3151	3155	1607.40	2812.90
		1560.10	3156	3160	1608.40	2814.70
		1561.10	3161	3165	1609.40	2816.50
		1562.10	3166	3170	1610.50	2818.30

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
		1563.10	3171	3175	1611.50	2820.10
		1564.10	3176	3180	1612.50	2821.90
		1565.10	3181	3185	1613.60	2823.80
		1566.10	3186	3190	1614.60	2825.50
		1567.10	3191	3195	1615.60	2827.40
		1568.10	3196	3200	1616.70	2829.10
		1569.10	3201	3205	1617.70	2831.00
		1570.10	3206	3210	1618.70	2832.70
		1571.10	3211	3215	1619.80	2834.60
		1572.10	3216	3220	1620.80	2836.30
		1573.10	3221	3225	1621.80	2838.20
		1574.10	3226	3230	1622.80	2839.90
		1575.10	3231	3235	1623.90	2841.80
		1576.10	3236	3240	1624.90	2843.60
		1577.10	3241	3245	1625.90	2845.40
		1578.10	3246	3250	1627.00	2847.20
		1579.10	3251	3255	1628.00	2849.00
		1580.10	3256	3260	1629.00	2850.80
		1581.10	3261	3265	1630.10	2852.60
		1582.10	3266	3270	1631.10	2854.40
		1583.10	3271	3275	1632.10	2856.20
		1584.10	3276	3280	1633.20	2858.00
		1585.10	3281	3285	1634.20	2859.80
		1586.10	3286	3290	1635.20	2861.60
		1587.10	3291	3295	1636.30	2863.40
		1588.10	3296	3300	1637.30	2865.20
			3301	3305	1638.30	2867.00
			3306	3310	1639.30	2868.70
			3311	3315	1640.30	2870.50
			3316	3320	1641.30	2872.20
			3321	3325	1642.30	2874.00
			3326	3330	1643.30	2875.70
			3331	3335	1644.30	2877.50
			3336	3340	1645.30	2879.20
			3341	3345	1646.30	2881.00
			3346	3350	1647.30	2882.70
			3351	3355	1648.30	2884.50
			3356	3360	1649.30	2886.20
			3361	3365	1650.30	2888.00
			3366	3370	1651.30	2889.70
			3371	3375	1652.30	2891.50
			3376	3380	1653.30	2893.20
			3381	3385	1654.30	2895.00
			3386	3390	1655.30	2896.70

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1985 (Cont.)

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for Dec. 1984)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or the primary insurance amount (as determined under subsec. (c)) is—	Or the average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of the wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than-		
			3391	3395	1656.30	2898.50
			3396	3400	1657.30	2900.20
			3401	3405	1658.30	2902.00
			3406	3410	1659.30	2903.70
			3411	3415	1660.30	2905.50
			3416	3420	1661.30	2907.20
			3421	3425	1662.30	2909.00
			3426	3430	1663.30	2910.70
			3431	3435	1664.30	2912.50
			3436	3440	1665.30	2914.20
			3441	3445	1666.30	2916.00
			3446	3450	1667.30	2917.70
			3451	3455	1668.30	2919.50
			3456	3460	1669.30	2921.20
			3461	3465	1670.30	2923.00
			3466	3470	1671.30	2924.70
			3471	3475	1672.30	2926.50
			3476	3480	1673.30	2928.20
			3481	3485	1674.30	2930.00
			3486	3490	1675.30	2931.70
			3491	3495	1676.30	2933.50
			3496	3500	1677.30	2935.20

TABLE 2.—SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Primary insurance amount payable for Dec. 1984	No. of years required minimum earnings level	Primary insurance amount payable for Dec. 1985	Maximum family benefit payable for Dec. 1985
18.70	11	19.20	28.90
37.00	12	38.10	57.30
55.50	13	57.20	86.00
74.00	14	76.20	114.50
92.40	15	95.20	142.90
111.00	16	114.40	171.70
129.40	17	133.40	200.10
148.00	18	152.50	228.80
166.40	19	171.50	257.30
184.70	20	190.40	285.70

TABLE 2.—SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS (Cont.)

Primary insurance amount payable for Dec. 1984	No. of years required minimum earnings level	Primary insurance amount payable for Dec. 1985	Maximum family benefit payable for Dec. 1985
203.30	21	209.60	314.60
221.80	22	228.60	343.10
240.40	23	247.80	371.90
258.80	24	266.80	400.30
277.20	25	285.70	428.70
295.90	26	305.00	457.70
314.30	27	324.00	486.20
332.70	28	343.00	514.60
351.10	29	361.90	543.20
369.50	30	380.90	571.60

APPENDIX C

FORMULA FOR COMPUTING BENEFITS[1]

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30731) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed", in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings". We then compute the primary insurance amount, using the worker's "average indexed monthly earnings". The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1985, we divide the average of the total wages for 1983, $15,239.24, by the average of the total wages for each year prior to 1983 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1985.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1985 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1983, $15,239.24, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1985, the ratio is 1.558294. Multiplying the 1979 amounts of $180 and $1,085 by 1.558294 produces the amounts of $280.49 and $1,690.75. These must then be rounded to $280 and $1,691. Accordingly, the portions of the average indexed monthly earnings to be used in 1985 are determined to be the first $280, the amount between $280 and $1,691, and the amount over $1,691.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1985, or who die in 1985 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $280 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $280 and through $1,691, plus

(c) 15 percent of the average indexed monthly earnings over $1,691.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)) as amended by Pub. L. 97-35.[2]

---

[1] In compliance with Social Security Act §215(a)(1)(D), this formula was published in the **Federal Register** (49 FR 43778) on October 31, 1984.

For 1986 computations, see **Federal Register** (50 FR 45558) dated October 31, 1985. (Vol. II, p. 803)

For 1987 computations, see **Federal Register** (51 FR 40256) dated November 6, 1986. (Vol. II, p. 795)

[2] P.L. 97-35, §2206, changed the provision regarding rounding, effective with respect to initial calculations and adjustments which are attributable to periods after August 1981.

APPENDIX D

"AVERAGE OF THE TOTAL WAGES" FOR INDEXING PURPOSES[1]

Calendar Year	Average Wages	Calendar Year	Average Wages
1951	$2,799.16	1969	5,893.76
1952	2,973.32	1970	6,186.24
1953	3,139.44	1971	6,497.08
1954	3,155.64	1972	7,133.80
1955	3,301.44	1973	7,580.16
1956	3,532.36	1974	8,030.76
1957	3,641.72	1975	8,630.92
1958	3,673.80	1976	9,226.48
1959	3,855.80	1977	9,779.44
1960	4,007.12	1978	10,556.03
1961	4,086.76	1979	11,479.46
1962	4,291.40	1980	12,513.46
1963	4,396.64	1981	13,773.10
1964	4,576.32	1982	14,531.34
1965	4,658.72	1983	15,239.24
1966	4,938.36	1984	16,135.07
1967	5,213.44	1985	16,822.51
1968	5,571.76		

---

[1] See Social Security Act §§203(f)(8)(B)(ii)(I); 215(a)(1)(B)(ii), (a)(1)(D); and 230(b)(2). Figures for 1951 through 1977 were published at 43 FR 61016 on December 29, 1978.

Figures for:	Published at:	Date:
1978	44 FR 63956	November 1, 1979
1979	45 FR 76252	November 18, 1980
1980	46 FR 53791	October 30, 1981
1981	47 FR 51003	November 10, 1982
1982	48 FR 50414	November 1, 1983
1983	49 FR 43776	October 31, 1984
1984	50 FR 45558	October 31, 1985
1985	51 FR 40256	November 5, 1986

APPENDIX E

[“Old Law” Contribution and Benefit Base Special Minimum Benefits—“Year of Coverage”]

Year	Amount	Authority	
1977	$16,500	SSAct §230	
1978	17,700	SSAct §230	
1979	18,900	44 FR 28881	May 17, 1979
1980	20,400	45 FR 21715	April 2, 1980
1981	22,200	46 FR 39477	August 3, 1981
1982	24,300	47 FR 6098	February 10, 1982
1983	26,700	48 FR 7814	February 2, 1983
1984	28,200	49 FR 9959	March 16, 1984
1985	29,700	50 FR 11562	March 22, 1985
1986	31,500	50 FR 45558	October 31, 1985
1987	32,700	51 FR 40256	November 5, 1986

APPENDIX F

CURRENT AND PAST MEDICARE COST-SHARING AND PREMIUM AMOUNTS

A. HI Cost-Sharing Amounts[1]

		Daily Coinsurance		
		Hospital		
Calendar Year	Initial Deductible	61-90 Days	Lifetime Reserve	Skilled Nursing Facility, 21-100
1966-68*	$40	$10	$20	$ 5.00
1969	44	11	22	5.50[2]
1970	52	13	26	6.50[3]
1971	60	15	30	7.50[4]
1972	68	17	34	8.50[5]
1973	72	18	36	9.00[6]
1974	84	21	42	10.50[7]
1975	92	23	46	11.50[8]
1976	104	26	52	13.00[9]
1977	124	31	62	15.50[10]
1978	144	36	72	18.00[11]
1979	160	40	80	20.00[12]
1980	180	45	90	22.50[13]
1981	204	51	102	25.50[14]
1982	260	65	130	32.50[15]
1983	304	76	152	38.00[16]
1984	356	89	178	44.50[17]
1985	400	100	200	50.00[18]
1986	492	123	246	61.50[19]
1987	572	143	286	71.50[20]

*Hospital benefits first available in July 1966, except lifetime reserve benefits first available in January 1968. Skilled nursing facility benefits first available in January 1967.

NOTE: For July and August 1973, the promulgated SMI standard premium rate shown above was reduced by the Cost of Living Council to $5.80 and $6.10, respectively.

---

[1] See §1813.

[2] 33 FR 14380; September 24, 1968.

[3] 34 FR 15264; September 30, 1969.

[4] 35 FR 15254; September 30, 1970.

[5] 36 FR 19271; October 1, 1971.

[6] 37 FR 21452; October 11, 1972.

[7] 38 FR 28102; October 11, 1973.

[8] 39 FR 35699; October 3, 1974.

[9] 40 FR 45216; October 1, 1975.

[10] 41 FR 43220; September 30, 1976.

[11] 42 FR 51669; September 29, 1977.

[12] 43 FR 44891; September 29, 1978.

[13] 44 FR 55660; September 27, 1979.

[14] 45 FR 65042; October 1, 1980.

[15] 46 FR 47115; September 24, 1981.

[16] 47 FR 43631; October 1, 1982.

[17] 48 FR 44912; September 30, 1983.

[18] 49 FR 38513; September 28, 1984.

[19] 50 FR 39940; September 30, 1985.

[20] 51 FR 32691; September 15, 1986.

B. HI and SMI Premium Rates

Period	Standard Monthly Premium Rate		SMI Adequate Actuarial Rates[1]	
	HI[2]	SMI[1]	Aged	Disabled
7/66-3/68	....	$ 3.00	....	....
4/68-6/70	....	4.00[3]	....	....
7/70-6/71	....	5.30[4]	....	....
7/71-6/72	....	5.60[5]	....	....
7/72-6/73	....	5.80[6]	....	....
7/73-6/74	$ 33.00	6.30[7]	$6.30	$14.50[8]
7/74-6/75	36.00[9]	6.70	6.70	18.00[10]
7/75-6/76	40.00[11]	6.70	7.50	18.50[12]
7/76-6/77	45.00[13]	7.20	10.70	19.00[14]
7/77-6/78	54.00[15]	7.70	12.30	25.00[16]
7/78-6/79	63.00	8.20	13.40	25.00[17]
7/79-6/80	69.00	8.70	13.40	25.00[18]
7/80-6/81	78.00[19]	9.60	16.30	25.50[20]
7/81-6/82	89.00[21]	11.00	22.60	36.60[22]
7/82-6/83	113.00	12.20	24.60	42.10[23]
7/83-12/83	113.00	12.20[24]	27.00	46.10[25]
1/84-12/84	155.00[26]	14.60	29.20	54.30[27]
1/85-12/85	174.00	15.50	31.00	52.70[28]
1/86-12/86	214.00	15.50	31.00	40.80[29]
1/87-12/87	248.00[30]	17.90[31]	35.80[30]	53.00[30]

---

[1] See 1839(c).

[2] See 1818.

[3] 32 FR 21044; December 30, 1967.
33 FR 1215; January 30, 1968.
34 FR 223; January 7, 1969.

[4] 34 FR 20442; December 31, 1969.

[5] 35 FR 20018; December 31, 1970.

[6] 37 FR 103; January 5, 1972.

[7] 38 FR 93; January 3, 1973.

[8] 38 FR 94; January 3, 1973.

[9] 39 FR 1523; January 10, 1974.

[10] 39 FR 1658; January 11, 1974.

[11] 39 FR 45309; December 31, 1974.

[12] 40 FR 1289; January 7, 1975.

[13] 40 FR 59472; December 24, 1975.

[14] 41 FR 1310; January 7, 1976.

[15] 41 FR 54823; December 15, 1976.

[16] 41 FR 55751; December 22, 1976.

[17] 42 FR 65275; December 30, 1977.

[18] 43 FR 61010; December 29, 1978.

[19] 44 FR 73164; December 17, 1979.

[20] 44 FR 77264; December 31, 1979.

[21] 45 FR 85160; December 24, 1980.

[22] 45 FR 85161; December 24, 1980.

[23] 46 FR 63389; December 31, 1981.

[24] 48 FR 26891; June 10, 1983.

[25] 47 FR 58366; December 30, 1982.

[26] 48 FR 44913; September 30, 1983.

[27] 48 FR 44914; September 30, 1983.

[28] 49 FR 38510; September 28, 1984.

[29] 50 FR 39932; September 30, 1985.

[30] 51 FR 35053; October 1, 1986.

[31] 51 FR 35291; October 2, 1986.

APPENDIX G

Medicare Program; Payment to Hospices[1]

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1985 through October 31, 1986. In addition, this notice announces the increase in the daily rates of payment for hospice care that is specified in section 1814(i)(1) of the Social Security Act as amended by section 9123 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

EFFECTIVE DATE: The payment cap is effective for the period November 1, 1985 through October 31, 1986. The revised rates are effective for hospice care furnished on or after April 1, 1986.

SUPPLEMENTARY INFORMATION: Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), which was enacted on September 3, 1982, expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries. The principal changes made by section 122 are contained in sections 1812(a)(4) and (d), 1813(a)(4), 1814(a)(7) and (i), 1816(e)(5) and 1861(dd) of the Social Security Act (the Act). Section 1814(i) of the Act was further amended on August 29, 1983 by section 1(a) of Pub. L. 98-90 and on November 8, 1984 by section 1(a) of Pub. L. 98-617. Our regulations implementing the hospice program under Medicare were published in the **Federal Register** on December 16, 1983 (48 FR 56008) and are set forth at 42 CFR Part 418.

Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in § 418.302.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) was enacted. Section 9123(b) of Pub. L. 99-272 amended section 1814(i)(1) of the Act to provide for an increase in the rates for the four categories of payment for hospice care. As amended, section 1814(i)(1) of the Act specifies that, for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care is $63.17 and the daily rate of payment for the other three services is increased by $10. Set forth below are the four categories of services and the rates that were in effect before the enactment of Pub. L. 99-272 and the rates that went into effect for care furnished on or after April 1, 1986.

Category of payment	Rates	
	Before April 1, 1986	On or after April 1, 1986
Routine home care	$53.17	$63.17
Continuous home care	358.67	368.67
Inpatient respite	55.33	65.33
General inpatient	271.00	281.00

The provisions of section 9123(b) of Pub. L. 99-272 are self-implementing and we have been making payment for hospice care under the new rates since the law was enacted.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap. The payment cap is described in regulations at § 418.309. Section 1814(i)(2)(B) of the Act and § 418.309 of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500. Each hospice's cap by amount is calculated by multiplying the yearly cap by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

Section 1814(i)(2)(B) of the Act and § 418.309(a) specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year. For purposes of the cap year that runs from November 1, 1985 through October 31, 1986, an index is needed to measure inflation (or deflation) from March 1984 to March 1986 (the fifth month of the accounting year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

---

[1] This material was published in the **Federal Register** on October 8, 1986, at 51 FR 36066.

BLS has recently released figures that indicate a March 1986 price level in the medical care expenditure category of the CPI of 425.8 (1967 = 100.0). This figure is divided by the March 1984 price level of 374.5 to yield an index of 1.137.

Therefore, the new hospice cap is the product of $6,500 and 1.137; that is, $7,391. This cap applies to hospices for care furnished from November 1, 1985 to October 31, 1986.

This notice merely announces amounts required by legislation and by § 418.309. It is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) and 42 CFR 418.309)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

APPENDIX H

CROSS-REFERENCE TABLE

SOCIAL SECURITY ACT—U.S. CODE

THIS TABLE SHOWS ALL SOCIAL SECURITY ACT SECTION NUMBERS AND THE CORRESPONDING SECTION NUMBERS IN TITLE 42 OF THE UNITED STATES CODE, *EXCEPT* WHERE THE CORRESPONDING 42 U.S. CODE SECTION NUMBER CAN BE ASCERTAINED BY ADDING "200" TO THE SOCIAL SECURITY ACT SECTION.

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1	301
2	302
3	303
4	304
6	306
224	424a
226A	426-1
705	906
706	907
707	908
708	909
709	910
710	911
1121	1320a
1122	1320a-1
1123	1320a-2
1124	1320a-3
1125	1320a-4
1126	1320a-5
1127	1320a-6
1128	1320a-7
1128A	1320a-7a
1129	1320a-8
1131	1320b-1
1132	1320b-2
1133	1320b-3
1134	1320b-4
1135	1320b-5
1136	1320b-6
1137	1320b-7
1138	1320b-8
1151	1320c
1152	1320c-1
1153	1320c-2
1154	1320c-3
1155	1320c-4
1156	1320c-5
1157	1320c-6
1158	1320c-7
1159	1320c-8
1160	1320c-9
1161	1320c-10
1162	1320c-11
1163	1320c-12

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1164	1320c-13
1201	1321
1202	1322
1203	1323
1204	1324
1401	1351
1402	1352
1403	1353
1404	1354
1405	1355
1601	1381 note*
1602	1382 note*
1603	1383 note*
1604	1384 note*
1605	1385 note*
1601	1381
1602	1381a
1611	1382
1612	1382a
1613	1382b
1614	1382c
1615	1382d
1616	1382e
1617	1382f
1618	1382g
1619	1382h
1620	1382i
1621	1382j
1631	1383
1632	1383a
1633	1383b
1634	1383c
1701	1391
1702	1392
1703	1393
1704	1394
1801	1395
1802	1395a
1803	1395b
1811	1395c
1812	1395d
1813	1395e
1814	1395f

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1815	1395g
1816	1395h
1817	1395i
1818	1395i-2
1831	1395j
1832	1395k
1833	1395l
1835	1395n
1836	1395o
1837	1395p
1838	1395q
1839	1395r
1840	1395s
1841	1395t
1842	1395u
1843	1395v
1844	1395w
1845	1395w-1
1861	1395x
1862	1395y
1863	1395z
1864	1395aa
1865	1395bb
1866	1395cc
1867	1395dd
1869	1395ff
1870	1395gg
1871	1395hh
1872	1395ii
1873	1395jj
1874	1395kk
1875	1395ll
1876	1395mm
1877	1395nn
1878	1395oo
1879	1395pp

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1880	1395qq
1881	1395rr
1882	1395ss
1883	1395tt
1884	1395uu
1885	1395vv
1886	1395ww
1887	1395xx
1888	1395yy
1889	1395zz
1901	1396
1902	1396a
1903	1396b
1904	1396c
1905	1396d
1907	1396f
1908	1396g
1909	1396h
1910	1396i
1911	1396j
1912	1396k
1913	1396l
1914	1396m
1915	1396n
1916	1396o
1917	1396p
1918	1396q
1919	1396r
1920	1396r-1
1921	1396s
2001	1397
2002	1397a
2003	1397b
2004	1397c
2005	1397d
2006	1397e

*P.L. 92-603, §301, amended title XVI to exclude these sections and to substitute the supplemental security income program, and §303 repealed these State-administered title XVI sections, effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a social services program under these provisions if it chooses.

APPENDIX I

LAWS AMENDING THE SOCIAL SECURITY ACT

Public Law	*Approved*	*Short Title of Public Law*
75-722	06-25-38	Railroad Unemployment Insurance Act
76-1	02-10-39	[Internal Revenue Code of 1939][1]
76-36	04-19-39	[State Unemployment Compensation Appropriations]
76-141	06-20-39	[Railroad Unemployment Insurance Act, Amendments]
76-379	08-10-39	Social Security Act Amendments of 1939
78-17	03-24-43	[War Shipping Administration]
78-235	02-25-44[2]	Revenue Act of 1943
78-285	04-04-44	[War Shipping Administration, Amendments]
78-410	07-01-44	Public Health Service Act
78-458	10-03-44	War Mobilization and Reconversion Act of 1944
79-201	10-23-45	[Bonneville Project Act, Amendments]
79-291	12-29-45	[International Organizations Immunities Act]
79-719	08-10-46	Social Security Act Amendments of 1946
80-379	08-06-47	Social Security Act Amendments of 1947
80-492	04-20-48[2]	[Social Security Act Amendments—April 1948]
80-642	06-14-48[2]	[Employment Taxes—Social Security Benefits]
81-174	07-16-49	[Social Security Act—§1302 Extension]
81-439	10-31-49	Agricultural Act of 1949
81-734	08-28-50	Social Security Act Amendments of 1950
81-814	09-23-50	Revenue Act of 1950
82-78	07-12-51	[Agricultural Act of 1949, Amendments]
82-420	06-28-52	[Social Security Act §218(f) Amendments]
82-590	07-18-52	Social Security Act Amendments of 1952
83-269	08-14-53	[Military Service Wage Credits]
83-279	08-15-53	[Wisconsin Retirement Fund]
83-567	08-05-54	Employment Security Administrative Financing Act of 1954
83-761	09-01-54	Social Security Amendments of 1954
83-767	09-01-54	[Unemployment Compensation]
84-325	08-09-55	[Military Wage Credits—pre April 1956]
84-880	08-01-56	Social Security Amendments of 1956
84-881	08-01-56	Servicemen's and Veterans' Survivor Benefits Act
85-109	07-17-57	[Social Security Act—Title II Amendments—1957]
85-226	08-30-57	[Retirement Systems in Certain States]
85-227	08-30-57	[Retirement Systems—State and Local Employees]
85-229	08-30-57	[Social Security Coverage—State and Local Employees]
85-238	08-30-57	[Social Security Act—Title II Amendments—1957]
85-239	08-30-57	[Internal Revenue—SEI—Ministers]
85-786	08-27-58	[Social Security—Wages]
85-787	08-27-58	[Social Security Coverage—Two-part Retirement Systems]
85-798	08-28-58	[Social Security—Title II Amendments—1958]
85-840	08-28-58	Social Security Amendments of 1958
85-848	08-28-58	Ex-Serviceman's Unemployment Compensation Act of 1958
85-857	09-02-58	[Title 38, United States Code, Codification]
85-927	09-06-58	[Social Security Act Amendments—September 1958]
86-70	06-25-59	Alaska Omnibus Act
86-168	08-18-59	Farm Credit Act of 1959
86-284	09-16-59	[Social Security Act—§218(p) Amendment]
86-346	09-22-59	[U.S. Savings Bonds Interest Rates]
86-415	04-08-60	Public Health Service Commissioned Corps Personnel Act of 1960
86-442	04-22-60	[Federal Employees—Unemployment Compensation—Eligibility]

Public Law	*Approved*	*Short Title of Public Law*
86-507	06-11-60	[Authorization for Use of Certified Mail]
86-624	07-12-60	Hawaii Omnibus Act
86-778	09-13-60	Social Security Amendments of 1960
87-6	03-24-61	Temporary Extended Unemployment Compensation Act of 1961
87-31	05-08-61	[Social Security Act Amendments—May 1961]
87-64	06-30-61	Social Security Amendments of 1961
87-256	09-21-61	Mutual Educational and Cultural Exchange Act of 1961
87-293	09-22-61	Peace Corps Act
87-543	07-25-62	Public Welfare Amendments of 1962
87-878	10-24-62	[Social Security Amendments of 1962]
88-31	05-29-63	[Social Security Act—Title IX Amendments]
88-156	10-24-63	Maternal and Child Health and Mental Retardation Planning Amendments of 1963
88-272	02-26-64	Revenue Act of 1964
88-347	06-30-64	[Social Security Act—Title XI Amendment]
88-350	07-02-64	[Retirement Systems—1964 Amendment]
88-382	07-23-64	[Nevada Retirement System]
88-641	10-13-64	[Social Security Act—Title IV Amendments]
88-650	10-13-64	[Social Security Act Amendments—1964]
89-97	07-30-65	Social Security Amendments of 1965
89-368	03-15-66	Tax Adjustment Act of 1966
89-384	04-08-66	[Initial Enrollment Period—Supplementary Medical Insurance Benefits]
89-554	09-06-66	[Enactment of Title 5, United States Code]
89-713	11-02-66	[Social Security Act—§1861(v) Amendment]
90-36	06-29-67	[Requests Under Tariff Schedules—Technical Amendments of 1965]
90-248	01-02-68	Social Security Amendments of 1967
90-364	06-28-68	Revenue and Expenditure Control Act of 1968
90-430	07-26-68	[Employment Security Administration Account—Transfers]
90-486	08-13-68	National Guard Technicians Act of 1968
91-41	07-09-69	[Tariff Schedules—Social Security Act Amendments]
91-53	08-07-69	[Unemployment Security Amendments—1969]
91-56	08-09-69	[Tariff Schedules—Social Security Act—Title XIX Amendments]
91-172	12-30-69	Tax Reform Act of 1969
91-373	08-10-70	Employment Security Amendments of 1970
91-452	10-15-70	Organized Crime Control Act of 1970
91-690	01-12-71	[Social Security Act—§1861(e) Amendment]
92-5	03-17-71	[Public Debt Limit—Social Security Wage Base]
92-40	07-01-71	[Social Security Act—§1113(d) Amendment]
92-223	12-28-71	[Social Security—Lump Sum Death Payment]
92-224	12-29-71	[Social Security Act—§903 Amendments]
92-329	06-30-72	[Emergency Unemployment Compensation Program Extension]
92-336	07-01-72	[Public Debt Limit—Extension]
92-345	07-10-72	[Social Security Act Title V Amendments]
92-512	10-20-72	[Limitation on Grants]
92-603	10-30-72	Social Security Amendments of 1972
93-53	07-01-73	[Public Debt Limit—Temporary Increase]
93-58	07-06-73	[Social Security Act—§226(e) Amendments]
93-66	07-09-73	[Cost-of-Living Increase in Social Security Benefits]
93-107	12-31-74[3]	[Montana Retirement System]
93-233	12-31-73	[Social Security Benefits—Increase]
93-368	08-07-74	[Vessels—Equipment and Repairs—Emergency Unemployment Compensation]
93-406	09-02-74	Employee Retirement Income Security Act of 1974
93-445	10-16-74[2]	[Railroad Retirement System Amendments]
93-480	10-26-74	[Tariffs Schedules—Social Security Act §1862 Amendments]
93-484	10-26-74	[Tariffs—Medicare Appeals]
93-608	01-02-75	[Reports to Congress]

Public Law	*Approved*	*Short Title of Public Law*
93-647	01-04-75	Social Service Amendments of 1974
94-44	06-28-75	[Social Security—Temporary Assistance]
94-48	07-01-75	[Social Security Medicaid]
94-88	08-09-75	[Tariffs—Social Security]
94-120	10-21-75	[Social Security—Title XX Amendments]
94-182	12-31-75	[Social Security—Medicare]
94-202	01-02-76	[Social Security—Hearings and Review Procedures]
94-273	04-21-76	Fiscal Year Adjustment Act
94-331	06-30-76	[Supplemental Security Income]
94-365	07-14-76	[Social Security—Report to Congress]
94-368	07-16-76	[Social Security—Medicare Extension]
94-401	09-07-76	[Social Security—Child Day Care]
94-437	09-30-76	Indian Health Care Improvement Act
94-455	10-04-76	Tax Reform Act of 1976
94-460	10-08-76	Health Maintenance Organization Amendments of 1976
94-552	10-18-76	[Social Security—Medical Assistance]
94-563	10-19-76	[Social Security—Taxes]
94-566	10-20-76	Unemployment Compensation Amendments of 1976
94-569	10-20-76	[Social Security—Presumptively Blind Individuals]
94-585	10-21-76	[Social Security—Food Stamps]
95-30	05-23-77	Tax Reduction and Simplification Act of 1977
95-59	06-30-77	[Smith College—Social Security Act Amendments]
95-83	08-01-77	[Public Health Service Act—Medicaid]
95-142	10-25-77	Medicare-Medicaid Anti-Fraud and Abuse Amendments
95-171	11-12-77	[Social Security Act—Titles IV and XVI Amendments]
95-210	12-13-77	[Social Security—Rural Health Clinic Services]
95-216	12-20-77	Social Security Amendments of 1977
95-292	06-13-78	[Social Security—End Stage Renal Disease Program]
95-472	10-17-78	[Treatment of Group Legal Service Plan Contributions]
95-559	11-01-78	Health Maintenance Organization Amendments of 1978
95-598	11-06-78	[Title 11, U.S.C.—Bankruptcy—Child Support]
95-600	11-06-78	Revenue Act of 1978
95-626	11-10-78	Health Services and Centers Amendments of 1978
96-32	07-10-79	[Public Health Service Act and Other Laws—Technical Amendments]
96-79	10-04-79	Health Planning and Resources Development Amendments of 1979
96-178	01-02-80	[Social Security Act Titles IV and XX Amendments]
96-222	04-01-80	Technical Corrections Act of 1979
96-249	05-26-80	Food Stamp Act Amendments of 1980
96-265	06-09-80	Social Security Disability Amendments of 1980
96-272	06-17-80	Adoption Assistance and Child Welfare Act of 1980
96-398	10-07-80	Mental Health Systems Act
96-403	10-09-80	[Social Security Tax Receipts—Allocation]
96-473	10-19-80	[Social Security Act Retirement Test Amendments]
96-499	12-05-80	Omnibus Reconciliation Act of 1980
96-611	12-28-80	[Social Security Act Titles IV, XVI and XVIII Amendment]
97-34	08-13-81	Economic Recovery Tax Act of 1981
97-35	08-13-81	Omnibus Budget Reconciliation Act of 1981
97-123	12-29-81	[Amendments to P.L. 97-35]
97-248	09-03-82	Tax Equity and Fiscal Responsibility Act of 1982
97-300	10-13-82	Job Training Partnership Act
97-375	12-21-82	Congressional Reports Elimination Act of 1982

Public Law	*Approved*	*Short Title of Public Law*
97-377	12-21-82	[Further Continuing Appropriations for Fiscal Year 1983]
97-424	01-06-83	Surface Transportation Assistance Act of 1982
97-448	01-12-83	Technical Corrections Act of 1982
97-455	01-12-83	[Temporary Payment of Disability Benefits]
98-21	04-20-83	Social Security Amendments of 1983
98-76	08-12-83	Railroad Retirement Solvency Act of 1983
98-90	08-29-83	[Social Security Act—Title XVIII Amendments—1983]
98-118	10-11-83	[Extension of "Federal Supplemental Compensation Act of 1982," P.L. 97-248, Title VI, Subtitle A]
98-135	10-24-83	Federal Supplemental Compensation Amendments of 1983
98-369	07-18-84	Deficit Reduction Act of 1984
98-378	08-16-84	Child Support Enforcement Amendments of 1984
98-396	08-22-84	Second Supplemental Appropriations Act, 1984
98-460	10-09-84	Social Security Disability Benefits Reform Act of 1984
98-617	11-08-84	[Social Security Act Titles IV, XVIII and XIX Amendments]
98-620	11-08-84	[Title IV—Federal Courts Improvements]
99-53	06-17-85	[Federal Employee Health Benefits Program Eligibility]
99-177	12-12-85	[Public Debt Limit Increase]
99-190	12-19-85	[Continuing Appropriations for Fiscal Year 1986]
99-198	12-23-85	Food Security Act of 1985
99-221	12-26-85	Cherokee Leasing Act
99-272	04-07-86	Consolidated Omnibus Budget Reconciliation Act of 1985
99-335	06-06-86	Federal Employees' Retirement System Act of 1986
99-349	07-02-86	Urgent Supplemental Appropriations Act, 1986
99-500	10-18-86	[Appropriations—Fiscal Year 1987]
99-509	10-21-86	Omnibus Budget Reconciliation Act of 1986
99-514	10-22-86	Tax Reform Act of 1986
99-570	10-27-86	Anti-Drug Abuse Act of 1986
99-576	10-28-86	Veterans' Benefits Improvement and Health-Care Authorization Act of 1986
99-591	10-30-86	[Continuing Appropriations—Fiscal Year 1987]
99-603	11-06-86	Immigration Reform and Control Act of 1986
99-643	11-10-86	Employment Opportunities for Disabled Americans Act

---

[1] Information within [ ] is supplied.

[2] Passed over veto.

[3] Private law.

APPENDIX J

NORTHERN MARIANA ISLANDS[1]

P.L. 94-241, Approved March 24, 1976 (90 Stat. 263)[2]

[48 U.S.C. 1681 note]

JOINT RESOLUTION

To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America"[3], and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947[4]; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

"Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

"Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

"Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the

---

[1] Background: The Northern Mariana Islands consist of 21 small islands, six of which are inhabited and 14 of which are large enough to be identified by name. Together with Guam, a U.S. territory, they form a western Pacific entity known as the Mariana Islands. The Marianas archipelago is one of three making up the Trust Territory of the Pacific Islands, a United Nations trusteeship under United States administration; the other two are the Carolines and the Marshall Islands. Saipan, Tinian and Rota, in that order, are the three largest islands of the Northern Marianas and most of the archipelago's 14,500 population lives on one or the other.

[2] See P.L. 95-134, §§403 and 501, in this Appendix, p. 847. See P.L. 95-348, §3(b) and (c) in this Appendix, p. 848.

[3] Presidential Proclamation 5564 dated November 3, 1986 published in the Federal Register on November 7, 1986 (51 FR 40399) placed this Covenant into full force and effect. (in this Appendix, p. 852)

[4] 61 Stat. 3301.

Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination."

* * * * * * *

"Article IV

"JUDICIAL AUTHORITY

* * * * * * *

"Section 403. * * *

(b) Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

"Article V

"APPLICABILITY OF LAWS

"Section 501. (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States.

"(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

"Section 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

"Section 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

* * * * * * *

"SECTION 606. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the 'Northern Mariana Islands Social Security Retirement Fund'. This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable.

"(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon[5] such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

"(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

"(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

"(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate Federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

"(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

* * * * * * *

"ARTICLE X

"APPROVAL, EFFECTIVE DATES, AND DEFINITIONS[6]

"SECTION 1001. (a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

"(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

---

[5] P.L. 98-213, §9, struck out "upon termination of the Trusteeship Agreement or" and substituted "on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon".

[6] See Presidential Proclamation 4534, dated October 24, 1977, published in the Federal Register on October 27, 1977 (43 FR 56593), in this Appendix, p. 850.

"SECTION 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States.[7]

"SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

"(a) Sections 105, 201-203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

"(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

"(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

"SECTION 1004. (a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

"(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffective until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

"SECTION 1005. As used in this Covenant:

"(a) 'Trusteeship Agreement' means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;

"(b) 'Northern Mariana Islands' means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14° north latitude, south of 21° north latitude, west of 150° east longitude and east of 144° east longitude;

"(c) 'Government of the Northern Mariana Islands' includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

"(d) 'Territory or possession' with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

"(e) 'Domicile' means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

"Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975."

* * * * * * *

SEC. 2. It is the sense of the Congress that pursuant to section 902 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendation with respect thereto.

---

[7] See Presidential Proclamation 5564 dated November 3, 1986, published in the Federal Register on November 7, 1986 (51 FR 40399), in this Appendix, p. 852.

* * * * * * *

[*Internal References.*—Social Security Act titles I, IV, X, XIV, XVI (State), XVI and §228 have footnotes referring to P.L. 94-241. P.L. 95-348, §3(b); P.L. 98-213, §§18, 23, and 24; and Proclamations 4534, 5207 and 5564 (this Appendix) cite P.L. 94-241.]

P.L. 95-134, Approved October 15, 1977 (91 Stat. 1159)
[Authorization for Appropriations—Insular Areas][1]

* * * * * * *

SEC. 403. [48 U.S.C. 1681 note] Effective on the date when section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by joint resolution approved on March 24, 1976 (90 Stat. 263) goes into force those laws which are referred to in section 502(a)(1) of said Covenant, except for any laws administered by the Social Security Administration, except for medicaid which is now administered by the Health Care Financing Administration, and except the Micronesian Claims Act of 1971 (85 Stat. 96) shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Northern Mariana Islands.[2]

SEC. 501. [48 U.S.C. 1469a] In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as "Insular Areas") it is hereby declared to be the policy of the Congress, notwithstanding any provision of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any insular area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to such department or agency with respect to each such consolidated grant: *Provided,* That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, shall[3] (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant. Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands,[4] and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under $200,000[5] (including in-kind contributions) required by law to be provided by American Samoa, Guam, the Virgin Islands,[6] or the Northern Mariana Islands.[7]

---

[1] See P.L. 95-348, §8, in this Appendix, p. 848.

[2] Covenant §502 became effective 11 A.M. of January 9, 1978, Northern Mariana Islands local time. See Presidential Proclamation 4534, signed October 24, 1977, in this Appendix p. 850.

[3] P.L. 96-205, §601, struck out "may" and substituted "shall".

[4] P.L. 98-454, §601(b), inserted ", Guam, the Virgin Islands,".

[5] P.L. 98-213, §6, struck out "$100,000" and substituted "$200,000".

[6] See footnote 4.

[7] P.L. 96-205, §601, added this sentence.

* * * * * * *

[*Internal References.*—P.L. 94-241, title, has a footnote referring to P.L. 95-134. P.L. 95-348, §§3(b)(1) and 8 cite P.L. 95-134.]

P.L. 95-348, Approved August 18, 1978 (92 Stat. 487)

[Northern Mariana Islands]

* * * * * * *

SEC. 3.

* * * * * * *

(b) [None assigned.] (1) The government of the Northern Marianas in carrying out the purposes of this Act, Public Law 95-134[1], or Public Law 94-241[2], may utilize, to the extent practicable, the available services and facilities of agencies and instrumentalities of the Federal Government on a reimbursable basis. Such amounts may be credited to the appropriation or fund which provided the services and facilities. Agencies and instrumentalities of the Federal Government may, when practicable, make available to the government of the Northern Marianas, upon request of the Secretary, such services and facilities as they are equipped to render or furnish, and they may do so without reimbursement if otherwise authorized by law.

(2) Any funds made available to the Northern Mariana Islands under grant-in-aid programs by section 502 of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (Public Law 94-241[3]), or pursuant to any other Act of Congress enacted after March 24, 1976, are hereby authorized to remain available until expended.

(3) Any amount authorized by the Covenant described in paragraph (2) or by any other Act of Congress enacted after March 24, 1976, which authorizes appropriations for the Northern Mariana Islands, but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

(c) [48 U.S.C. 1681 note] Notwithstanding the provisions of the Food Stamp Act of 1977[4], the Secretary of Agriculture is authorized, upon the request of the Governor of the Northern Mariana Islands, acting pursuant to legislation enacted in accordance with sections 5 and 7 of article II of the Constitution of the Northern Mariana Islands, and for the period during which such legislation is effective, (1) to implement a food stamp program in part or all of the Northern Mariana Islands with such income and household standards of eligibility, deductions, and allotment values as the Secretary determines, after consultation with the Governor, to be suited to the economic and social circumstances of such islands: *Provided*, That in no event shall such income standards of eligibility exceed those in the forty-eight contiguous States, and (2) to distribute or permit a distribution of federally donated foods in any part of the Northern Mariana Islands for which the Governor has not requested that the food stamp program be implemented. This authority shall remain in effect through September 30, 1981, and shall not apply to section 403 of Public Law 95-135.

* * * * * * *

AUTHORIZATIONS TO REMAIN AVAILABLE

SEC. 8. [None assigned.] Any amount authorized by this Act or by the Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (Public Law 95-134; 91 Stat. 1159[5]) but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

* * * * * * *

[*Internal References.*—P.L. 94-241 and P.L. 95-134 have footnotes referring to P.L. 95-348.]

---

[1] See P.L. 95-134, in this Appendix, p. 847.

[2] See P.L. 94-241, in this Appendix, p. 843.

[3] See footnote 2.

[4] See Food Stamp Act of 1977 (P.L. 88-525), (in Vol. II, p. 421).

[5] See P.L. 95-134, this Appendix, p. 847.

P.L. 98-213, Approved December 8, 1983 (97 Stat. 1459)
[Insular Affairs]

* * * * * * *

SEC. 17. [48 U.S.C. 1681 note] No provision of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall bar the United States of America from paying compensation to or employing any citizen of the Northern Mariana Islands.

SEC. 18. [48 U.S.C. 1681 note] No requirement of United States citizenship in any Federal law which provides Federal services or financial assistance and which is applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant or, if enacted subsequent to March 24, 1976, by its own terms shall bar a citizen of the Northern Mariana Islands from receiving services or assistance pursuant to such law.

SEC. 19. [48 U.S.C. 1681 note] (a) The President may, subject to the provisions of section 20 of this Act, by proclamation provide that the requirement of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands. The President is authorized to correct clerical errors in the list, and to add to it provisions, where it appears from the context that they were inadvertently omitted from the list.

(b) A statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors shall, for the purposes of this Act, be considered to impose a requirement of United States citizenship or nationality.

SEC. 20. [48 U.S.C. 1681 note] (a) The President may issue one or more proclamations under the authority of this Act.

(b) When issuing such proclamation or proclamations the President—

(1) shall take into account:

(i) the hardship suffered by the citizens of the Northern Mariana Islands resulting from the fact that, while they are subject to most of the laws of the United States, they are denied the benefit of those laws which contain a requirement of United States citizenship or nationality;

(ii) the responsibilities, obligations, and limitations imposed upon the United States by international law;

(2) may make the requirement of United States citizenship or nationality inapplicable only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States;

(3) may make the requirement of a United States citizenship or nationality inapplicable only in the Northern Mariana Islands;

(4) may retain the requirement of United States citizenship or nationality with respect to parts of a statute or portion thereof.

SEC. 21. [48 U.S.C. 1681 note] If the President does not issue any proclamation authorized by section 19 of this Act within a period of six months following the effective date of the Act, the requirement of United States citizenship or nationality as a prerequisite of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant shall not be applicable to citizens of the Northern Mariana Islands: *Provided*, That the provisions of this section shall not be applicable to any requirements of United States citizenship or nationality contained in statutes relating to the political rights of citizenship, and to the diplomatic protection of, and services to, citizens or nationals of the United States in foreign countries: *Provided further*, That with respect to the statutes relating to the uniformed services, the requirement of United States citizenship or nationality shall remain in effect, except with respect to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States.

SEC. 22. [48 U.S.C. 1681 note] Nothing in this Act shall be construed as extending to the Northern Mariana Islands any statutory provision or regulation not otherwise applicable to or within the Northern Mariana Islands, in particular the statutes relating to immigration and nationality and the regulations issued under them.

SEC. 23. [48 U.S.C. 1681 note] The authority of the President to issue proclamations under section 19 of this Act shall terminate upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant. Section 21 of this Act shall not become effective if the Commonwealth of the Northern Mariana Islands is established within the period of six months following the effective date of this Act.

SEC. 24. [48 U.S.C. 1681 note] As used in this Act:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or

(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

* * * * * * *

[*Internal Reference.*—Proclamation 5207 cites sections 19 and 20 of P.L. 98-213.]

Proclamation 4534 October 24, 1977

Constitution of the Northern Mariana Islands

By the President of the United States of America

A Proclamation[1]

On February 15, 1975, the Marianas Political Status Commission, the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States signed a Covenant, the purpose of which is to provide for the eventual establishment of a Commonwealth of the Northern Mariana Islands in political union with the United States of America. This Covenant was subsequently approved by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands voting in a plebiscite. The Covenant was approved by the Congress of the United States by joint resolution approved March 24, 1976 (Public Law 94-241; 90 Stat. 263).

In accordance with the provisions of Article II of the Covenant, the people of the Northern Mariana Islands have formulated and approved a Constitution which was submitted to me on behalf of the Government of the United States on April 21, 1977, for approval on the basis of its consistency with the Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. Pursuant to the provisions of Section 202 of the Covenant, the Constitution of the Northern Mariana Islands will be deemed to have been approved by the Government of the United States six months after the date of submission to the President unless sooner approved or disapproved.

The six-month period of Section 202 of the Covenant having expired on October 22, 1977, I am pleased to announce that the Constitution of the Northern Mariana Islands is hereby deemed approved.

I am satisfied that the Constitution of the Northern Mariana Islands complies with the requirements of Article II of the Covenant. I have also received advice from the Senate Committee on Energy and Natural Resources and the Subcommittee on National Parks and Insular Affairs of the House Committee on Interior and Insular Affairs that the Constitution complies with those requirements.

Sections 1003(b) and 1004(b) of the Covenant provide that the Constitution of the Northern Mariana Islands and the provisions specified in Section 1003(b) of the Covenant shall become effective on a date proclaimed by the President which will be not more than 180 days after the Covenant and the Constitution of the Northern Mariana Islands have both been approved.

---

[1] Published at 42 FR 56593, October 27, 1977 and 48 U.S.C. 1681 note.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim as follows:

SECTION. 1. The Constitution of the Northern Mariana Islands shall come into full force and effect at eleven o'clock on the morning of January 9, 1978, Northern Mariana Islands local time.

SEC. 2. Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 of the Covenant shall come into full force and effect on the date and at the time specified in Section 1 of this Proclamation.

SEC. 3. The authority of the President under Section 1004 of the Covenant to suspend the application of any provision of law to or in the Northern Mariana Islands until the termination of the Trusteeship Agreement is hereby reserved.

* * * * * * *

[Internal References.—P.L. 94-241, §1 (§1001 catchline) and P.L. 95-134, §403, have footnotes referring to Proclamation 4534.]

Proclamation 5207 of June 7, 1984

Application of Certain Laws of the United States to Citizens of the Northern Mariana Islands

By the President of the United States of America

A Proclamation

The Northern Mariana Islands, as part of the Trust Territory of the Pacific Islands, are administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations (61 Stat. 3301). The United States has undertaken to promote the political development of the Trust Territory toward self-government or independence and to protect the rights and fundamental freedoms of its peoples.

The United States and the Northern Mariana Islands have entered into a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241; 90 Stat. 263; 48 U.S.C. 1681, note[1]) pursuant to which many provisions of the laws of the United States became applicable to the Northern Mariana Islands as of January 9, 1978 (Proclamation No. 4534, Section 2).

Sections 19 and 20 of Public Law 98-213 (97 Stat. 1464)[2] authorize the President, subject to certain limitations, to provide by proclamation that requirements "of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by sections 19 and 20 of Public Law 98-213, do hereby proclaim as follows:

* * * * * * *

3. *Statutes relating to protection and services in foreign countries.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

* * * * * * *

(f) Section 1113 of the Act of August 14, 1935, c.531, as added by section 302 of Public Law 87-64, 75 Stat. 142, and as amended (42 U.S.C. 1313).

6. *Statutes relating to Federal programs and benefits.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

* * * * * * *

---

[1] See this Appendix, p. 843.

[2] See this Appendix, p. 849.

(i) Subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935, c.531, 49 Stat. 620, 622, as amended (42 U.S.C. 302(b)(3) and 304);

(j) Subsection (t) of section 202 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 118 of the Act of August 1, 1956, c.836, 70 Stat. 835, and as amended (42 U.S.C. 402(t));

(k) Subsection (a)(4) of section 103 of Public Law 89-97, 79 Stat. 333, as amended (42 U.S.C. 426a(a)(4));

(l) Subsection (a)(3) of section 228 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 302 of Public Law 89-368, 80 Stat. 67, as amended (42 U.S.C. 428(a)(3));

(m) Subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935, c.531, 49 Stat. 646, as amended (42 U.S.C. 1202(b)(2) and 1204);

(n) Subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935, c.531, as added by section 351 of the Act of August 28, 1950, c.809, 64 Stat. 555 (42 U.S.C. 1352(b)(2) and 1354);

* * * * * * *

7. As used in this Proclamation:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or
(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

(d) "Statute which imposes a requirement of United States citizenship or nationality" includes any statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors.

8. Upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant, the benefits acquired under this Proclamation shall merge without interruption into those to which the recipient is entitled by virtue of his acquisition of United States citizenship, unless the recipient exercises his privilege under section 302 of the Covenant to become a national but not a citizen of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

Published at 49 FR 24365, June 13, 1984 and 48 U.S.C. 1681 note.

Title 3— Proclamation 5564 of November 3, 1986

The President

Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands

By the President of the United States of America

A Proclamation[1]

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94-241 of March 24, 1976, 90 Stat. 263.[2] Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public Law 99-239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it is was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

---

[1] 51 FR 40399, November 7, 1986 and 48 U.S.C. 1681 note.
[2] See P.L. 94-241, this Appendix, p. 843.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the Authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 (Public Law 99-239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

Sec. 3. (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

APPENDIX K

TOTALIZATION AGREEMENTS

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence. . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."[1]

---

[1] The Totalization Agreements between the United States and Belgium, Canada, Norway, Sweden, and the United Kingdom of Great Britain and Northern Ireland have not yet been published in Treaties and Other International Acts. The material included in this Appendix consists of pertinent parts from House Documents relating to these Agreements.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM ON SOCIAL SECURITY

The United States of America

and

The Kingdom of Belgium

BEING DESIROUS of regulating the relationship between their two countries in the field of Social Security, have agreed to conclude an Agreement for that purpose, as follows:

PART I

Definitions and Laws

ARTICLE I

For the purposes of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Belgium, the territory of the Kingdom of Belgium;

2. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Belgium, a person of Belgian nationality;

3. "Laws" means the laws and regulations specified in Article 2;

4. "Worker" means an employed person (un "travailleur salarie") or a person deemed equivalent to an employed person, as well as a self-employed person, as established by the respective laws;

5. "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards Belgium, the Minister for Social Affairs, the Minister for the Middle Classes with regard to obligations imposed by virtue of the social security system for self-employed persons and the Secretary of State for Pensions with regard to old age and survivors benefits (pensions) of the system for employed and self-employed persons;

6. "Agency" means, as regards the United States, the Social Security Administration, and as regards Belgium, any institution, agency or authority responsible for applying all or part of the laws designated in Article 2.1(b);

7. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period was completed or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

8. "Benefit" means any cash benefit provided for in the laws of either Contracting State;

9. "Basic benefit amount" means, as regards the United States, the primary insurance amount as provided under United States laws, and as regards Belgium, the amount of the benefit which is payable on a worker's record under Belgium laws;

10. "Family member" means any person defined or recognized as a family member or designated as a member of the household by the laws under which the benefits are paid;

11. "Survivor" means any person eligible for benefits based on periods of coverage of a deceased person under the laws of each of the Contracting States;

12. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954;

13. "Refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

ARTICLE II

1. For the purpose of this Agreement, the applicable laws are:

a. As regards the United States, the laws governing the Federal old-age, survivors and disability insurance program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

b. As regards Belgium, the laws governing:

(i) old-age and survivors pensions insurance for employed and self-employed persons,

(ii) disability insurance for employed and self-employed persons, sailors of the merchant marine and miners,

and, with regard to Part III only, the laws governing:

(iii) social security for employed persons,
(iv) the social code for self-employed persons,
(v) sickness insurance for employed and self-employed persons,
(vi) unemployment insurance,
(vii) family allowances for employed and self-employed persons,
(viii) annual vacations for employed persons,
(ix) work accidents in the private sector,
(x) occupational disease in the private sector.

2. This agreement shall also apply to the same extent to future laws amending or supplementing the laws specified in this Article.

3. Unless otherwise provided in this Agreement, laws within the meaning of paragraph one shall not include treaties or other international agreements concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.

PART II

General Provisions

ARTICLE III

Unless otherwise provided, this Agreement shall apply to:

(a) persons who are or have been subject to the laws of a Contracting State and who are: (i) nationals of a Contracting State, or (ii) stateless persons or refugees residing in the territory of one Contracting State, as well as (iii) family members and survivors of persons in (i) or (ii);

(b) family members and survivors of persons who have been subject to the laws of a Contracting State regardless of the latter persons' nationality if the family members or survivors are nationals of a Contracting State, or stateless persons or refugees who reside in the territory of one Contracting State.

ARTICLE IV

1. Unless otherwise provided in this Agreement, the persons designated in Article three who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment with the nationals of that State.

2. Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that State shall not be applicable to the persons designated in Article 3 who reside in the territory of the other State.

3. Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other State applies to its own nationals who reside outside the territories of both States.

PART III

Provisions on Coverage

ARTICLE V

1. Unless otherwise provided in this Part or the Final Protocol, a person employed or self-employed within the territory of one of the Contracting States shall be subject only to the laws of that State even if the person resides in the territory of the other State, or if the person's employer or the offices of the employer are located in the territory of the other Contracting State.

2. Unless otherwise provided in this Part, persons employed on a vessel which files the flag of one of the Contracting States shall be subject only to the laws of that State,

even if they reside in the territory of the other State. For the purpose of this Part, a vessel which flies the flag of the United States shall be defined as an "American vessel" under the laws of the United States.

3. A person who is self-employed in the territory of both Contracting States shall be subject to the laws of only the Contracting State of which he is resident. In determining the amount of earnings creditable and contributions payable under the laws of that Contracting State, self-employment income earned within the territory of both Contracting States shall be taken into account.

ARTICLE VI

The rules set forth in Article 5 shall be subject to the following exceptions:

1. A person who is normally employed in the territory of a Contracting State by his employer in that territory and who is sent by that employer to work for that employer in the territory of the other Contracting State, shall remain subject to the laws of only the first Contracting State, provided that the employment in the territory of the other Contracting State is not expected to last for more than 5 years.

2. A person who is normally employed or self-employed in the territory of one of the Contracting States and who pursues a self-employed activity in the territory of the other Contracting State, shall remain subject to the laws of the first Contracting State, provided that the duration of the work in the other Contracting State is not expected to last for more than 5 years.

3. Article 5.2 shall not apply in the case of a person who is employed in the territorial waters or in a port of a Contracting State on a vessel flying the flag of the other Contracting State, if the person is not ordinarily employed at sea. In such cases Article 5.1 or Article 6.1 shall apply as appropriate.

4. A worker who is employed in a public or private international air transport enterprise of one of the Contracting States as a member of the traveling personnel and who works in the territory of the other Contracting State on either a permanent or a temporary basis shall be subject to the laws of only the Contracting State where the enterprise is headquartered.

ARTICLE VII

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Notwithstanding Article 5, nationals of one of the Contracting States who are employed by that State in the Territory of the other Contracting State but to whom the Conventions mentioned in paragraph 1 do not apply shall be subject to the laws of only the first Contracting State.

3. Persons employed by the United States Government in Belgium who are nationals or permanent residents of Belgium and who are not United States nationals shall be subject to Belgian laws unless they are covered under the civil service retirement system of the United State.

4. The persons referred to in paragraph 3 who are already covered by the civil service retirement system of the United States shall remain covered by that system and shall be exempt from the application of Belgian laws.

ARTICLE VIII

The Competent Authorities may agree to grant an exception to the provisions of Part III in the interest of particular workers or particular categories of workers, provided that any affected worker shall be subject to the laws of one of the Contracting States.

PART IV

Provisions on Benefits

Chapter I

General Provisions

ARTICLE IX

1. Where a person has completed periods of coverage under the laws of both Contracting States, the agency of a Contracting State which determines entitlement to benefits under its laws shall take account of periods of coverage which are creditable

under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its laws.

2. An agency of a Contracting State shall not apply the provisions of Article 9.1 if the person on whose account benefits are based has sufficient periods of coverage to satisfy the requirements for entitlement to benefits under the laws of that Contracting State.

3. Entitlement to a benefit from a Contracting State which results from Article 9.1 shall terminate with the acquisition of sufficient periods of coverage under the laws of that Contracting State to establish entitlement to a higher benefit without the need to invoke the provisions of this Article.

4. This Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning the payment of benefits that are more favorable to the persons listed in Article 3.

5. The laws of one Contracting State which provide for reduction, suspension or termination of benefits to take account of other social security benefits or other income may be applied to beneficiaries even if benefits are being paid by virtue of the laws of the other Contracting State or if the individual receives income in the territory of the other Contracting State. However, old-age, survivors, or disability benefits (pensions) shall not be reduced by benefits of the same type if they are paid by both Contracting States in conformity with the provisions of Article 10. For the application of this paragraph, old-age and survivors benefits granted under United States laws shall be treated as benefits under Article 10.

ARTICLE X

1. Where entitlement to a benefit under the laws of a Contracting State is established according to the provisions of Article 9.1, the agency of that Contracting State shall compute a theoretical basic benefit amount by considering (a) all the periods of coverage completed under its own laws and (b) all the periods of coverage completed under the laws of the other Contracting State which do not coincide with periods of coverage completed under its own laws.

2. The agency referred to in paragraph 1 shall then establish a pro rata basic benefit amount on the basis of the theoretical basic benefit amount by applying the ratio of the periods of coverage in clause (a) of paragraph 1 to the total of all periods of coverage in clauses (a) and (b) of paragraph 1.

3. Where a pro rata basic benefit amount has been computed, all benefits payable by the agency referred to in paragraph 1 on the basis of a worker's record shall be paid on the basis of that pro rata basic benefit amount.

Chapter II

Provisions Applicable to the United States

ARTICLE XI

1. The agency of the United States shall not apply the provisions of Chapter I in the case of a worker who has less than 6 quarters of coverage under United States laws.

2. In determining eligibility for benefits under Article 9, the agency of the United States shall credit 1 quarter of coverage for every 3 months of coverage certified as creditable by the agency of Belgium; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed 4.

3. For any calendar quarter credited with a quarter of coverage based on Belgian periods of coverage, the agency of the United States shall take into account for purposes of computing a theoretical basic benefit amount under Article 10 the amount of any earnings credited to the person in that period under Belgian laws, subject to the maximum annual creditable earnings limitation under United States laws.

Chapter III

Provisions Applicable to Belgium

ARTICLE XII

1. The agency of Belgium shall not be obliged to apply the provisions of Chapter I in the case of a worker who has less than 18 months of coverage under Belgian laws. In

the case of disability insurance, the agency of Belgium shall not apply the provisions of Chapter I unless the worker has completed 18 months of coverage under Belgian laws before the beginning of the period of incapacity for work leading to a disability.

2. In determining eligibility for benefits under Article 9, the agency of Belgium shall credit 3 months of coverage for each quarter of coverage certified as creditable by the United States agency to the extent the months do not coincide with months of coverage already credited as periods of coverage under Belgian laws.

3. For periods of coverage which were completed under the laws of the United States, the Belgian agency shall credit the average of the earnings credited under Belgian laws.

4. Where under Belgian laws the basic benefit amount is determined without regard to the duration of the periods of coverage, that amount shall be considered the theoretical basic benefit amount for purposes of Article 10.1.

5. Where periods of coverage resulting from employment or self-employment overlap with assimilated periods, only the former shall be counted in the application of Article 10.1.

6. Where Belgian laws establish as a condition for receiving certain benefits that the periods of coverage be completed in a given profession or occupation which is subject to a special pension system, in determining eligibility for such benefits only the periods completed under United States laws in the same profession or occupation shall be totalized with periods of coverage under such special system. If the total of such periods of coverage does not result in entitlement under the special system, or if totalization of such periods does not result in payment of the highest possible benefit amount, such periods shall be used to determine eligibility for benefits of the general pension system applicable under Belgian laws to employed persons.

PART V

Miscellaneous Provisions

ARTICLE XIII

The Competent Authorities of the two Contracting States shall:

(a) Make all necessary administrative arrangements for the application of this Agreement and designate liaison agencies;

(b) Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;

(c) Directly communicate to each other information concerning the measures taken for the application of this Agreement; and

(d) Directly communicate to each other, as soon as possible information concerning all changes in their respective laws which may affect the application of this Agreement.

ARTICLE XIV

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative agreement.

ARTICLE XV

Where the laws of a Contracting State provide that any document which is submitted to a Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to a Competent Authority or an agency of the other Contracting State in accordance with its laws.

ARTICLE XVI

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in an official language of either Contracting State.

2. An application or document may not be rejected because it is in the official language of the other Contracting State.

3. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

ARTICLE XVII

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant (a) requests that it be considered an application under the laws of the other Contracting State or (b) in the absence of a request that it be so considered, it appears in the determination of a claim based on that application that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. An applicant may request that an application for old-age or survivors benefits filed with an agency of one Contracting State not be considered an application under the laws of the other Contracting State or that the application be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. If, according to Belgian laws, the eligibility to certain benefits is determined without an application, the date the eligibility is established under Belgian laws shall, within the limits provided in United States laws, be considered as the basis for a claim for any corresponding benefit under United States law.

4. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

ARTICLE XVIII

An application, appeal or other document which according to the laws of a Contracting State must be submitted to an agency of that Contracting State within a specified period shall be considered to have been timely filed if it is submitted within the same period to an agency of the other Contracting State. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

ARTICLE XIX

1. Payments under this Agreement may be made in the currency of the Contracting State making the payment.

2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately decide on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

ARTICLE XX

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved pursuant to paragraph 1 by the Competent Authorities, it shall, at the request of either Contracting State, be submitted for binding arbitration in accordance with procedures to be agreed upon by the Contracting States.

PART VI

Transitional and Final Provisions

ARTICLE XXI

1. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

2. Consideration shall be given to periods of coverage under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be credited under its laws.

3. Subject to the provisions of paragraph 1, this Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

4. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

ARTICLE XXII

The attached Final Protocol shall form an integral part of this Agreement.

ARTICLE XXIII

1. This Agreement shall remain in force and effect until the expiration of 1 calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

ARTICLE XXIV

1. This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

2. The Competent Authority of either Contracting State may call a meeting for the consideration of a supplementary agreement.

ARTICLE XXV

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Washington, D.C. on February 19, 1982 in duplicate in the English, French and Dutch languages, the three texts being equally authentic.

For the Government of the
United States of America: John A. Svahn

For the Government of the
Kingdom of Belgium: J. Raoul Schoumaker

FINAL PROTOCOL

to the Agreement between the United States of America and the Kingdom of Belgium on Social Security

At the time of signing the Agreement between the United States of America and the Kingdom of Belgium on Social Security, the undersigned stated that they are in agreement on the following points:

1. The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article 5.1 of the Agreement shall apply when Article 6.1 is not applicable as a result of the preceding sentence.

2. Article 6.1 shall apply in cases where a national of a State other than a Contracting State is sent by an employer in the territory of one Contracting State to the territory of the other Contracting State, provided that its application does not conflict with any provision of another treaty or international agreement between a Contracting State and a third State.

3. Article 6.1 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

4. Notwithstanding Article 5 of this Agreement, Belgian nationals employed in the administrative and technical services of a Belgian diplomatic mission or consular post in the territory of the United States shall be subject to Belgian laws.

5. Where rights to benefits under Belgian laws for persons who have served in the armed forces or civil service are dependent on the completion of a minimum period of coverage either before entry into or after departure from the armed forces or civil service, periods of coverage completed under United States laws shall also be taken into account to the extent necessary.

6. The United States shall apply Chapters I and II of Part IV to nationals of a State other than a Contracting State who are not included among the persons referred to in Article 3.

7. With respect to Belgium, appeals which must be filed within a given period of time with a tribunal in Belgium shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with an agency in the United States.

8. Article 4 of the Agreement shall be applied by the United States in a manner consistent with section 233(c)(4) of the United States Social Security Act.

DONE at Washington, D.C. on February 19, 1982 in duplicate in the English, French and Dutch languages, the three texts being equally authentic.

For the Government of the
United States of America: John A. Svahn

For the Government of the
Kingdom of Belgium: J. Raoul Schoumaker

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM ON SOCIAL SECURITY

In conformity with Article 13(a) of the Agreement between the United States of America and the Kingdom of Belgium on Social Security of February 19, 1982 the Competent Authorities, to wit:

For the United States of America:
The Secretary of Health and Human Services,
represented by: Charles H. Price II
Ambassador of the United States of America
to the Kingdom of Belgium

For the Kingdom of Belgium:
The Minister of Social Affairs,
The Secretary of State for Pensions and
The Minister for the Middle Classes
represented by: J.L. Dehaene
Minister of Social Affairs

have agreed to the following provisions for the application of the Agreement:

CHAPTER 1

General Provisions

Article 1

1. The Agreement between the United States of America and the Kingdom of Belgium on Social Security of February 19, 1982 shall be referred to hereinafter as the "Agreement."

2. Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

1. In conformity with Article 13(a) of the Agreement, liaison agencies shall be:

(a) For the United States: the Social Security Administration;

(b) For Belgium:

—The National Pensions Office for Salaried Employees with respect to laws referred to in Article 2.1(b)(i) regarding self-employed persons;

—The National Sickness-Invalidity Insurance Institute with respect to laws referred to in Article 2.1(b)(ii) of the Agreement regarding invalidity insurance for salaried employees, for sailors of the merchant marine, miners, and self-employed persons;

—The National Social Security Office with respect to the application of laws referred to in Article 2.1(b)(iii) of the Agreement;

—The National Social Insurance Institute for Self-Employed Persons with respect to the application of laws referred to in Article 2.1(b)(iv) of the Agreement.

2. The Belgian liaison agencies, with the consent of the Belgian Competent Authorities, and the United States liaison agency shall agree upon joint procedures and forms necessary for implementation of the Agreement and this Administrative Agreement.

CHAPTER 2
Provisions on Coverage
Article 3

1. Where the laws of a Contracting State are applicable in accordance with Article 6.1 or 6.2 of the Agreement, the agency of that Contracting State designated in paragraph 3 shall issue upon request of the employer or self-employed person a certificate stating that the concerned employee or self-employed person remains covered by those laws and the date this coverage is expected to end.

2. In all other cases where the laws of the Contracting State are applicable in accordance with Part III of the Agreement, the agency of the Contracting State designated in paragraph 3 whose laws are applicable shall furnish upon request of the employer or self-employed person a certificate stating that the concerned employee or self-employed person is subject to the laws of that Contracting State.

3. The certificates referred to in paragraphs 1 and 2 shall be issued:

—in the United States
by the Social Security Administration
—in Belgium
by the National Social Security Office with respect to employed persons, and
by the National Social Security Institute for Self-Employed Persons with respect to self-employed persons.

The agency of either Contracting State which issues a certificate referred to in paragraphs 1 and 2 shall furnish without delay a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

4. In the application of Article 5.3 of the Agreement, a self-employed person shall, if requested by an agency of a Contracting State designated in paragraph 3, furnish to that agency a copy of tax returns filed with the tax authorities of the other Contracting State for any year or years specified by that agency. The person asked to provide this information shall have the requested copy or copies certified as true and exact by the tax authorities of the Contracting State with which the tax returns were filed. Pending receipt of the certified copy or copies, the agency may provisionally assess a contribution in an amount to be determined by the Competent Authority whose laws are applicable in accordance with Article 5.3 of the Agreement.

CHAPTER 3
Provisions on Benefits
Article 4

1. The liaison agency of the Contracting State with which an application for benefits is filed in accordance with Article 17 of the Agreement shall inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement.

2. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

3. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

Article 5

In the application of Articles 9, 10 and 11 of the Agreement, the Belgian liaison agency shall notify the United States liaison agency of the months in which a person completed periods of coverage under Belgian laws, and if necessary, the person's creditable earnings in any year during which periods of coverage were completed under Belgian laws.

Article 6

In the application of Articles 9, 10 and 12 of the Agreement, the United States agency shall when necessary notify the Belgian agency of the periods of coverage which a person has completed under the laws of the United States as well as the amount of the benefit to which the person is entitled.

CHAPTER 4

Miscellaneous Provisions

Article 7

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information for the purpose of Administering the Agreement or the laws specified in Article 2.1 of the Agreement.

Article 8

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each contracting State shall be the final judge of the probative value of the evidence submitted to it.

Article 9

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 10

1. Where administrative assistance is requested under Article 14 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.

2. Upon request, the agency of one Contracting State shall furnish without expense to the agency of the other Contracting State all medical information and documentation which is available relevant to the disability of a claimant or beneficiary.

3. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a consultative medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or benficiary is present, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

4. Amounts owed under paragraphs 1 and 3 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 11

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 12

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done[1] at Brussels, on 23rd of November, 1982, in duplicate in the English, French and Dutch languages, the three texts being equally authentic.

---

[1] As in original.

For the Government of the United States of America:	Charles H. Price II
For the Government of the Kingdom of Belgium:	J. L. Dehaene

ADDITIONAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM ON SOCIAL SECURITY, SIGNED FEBRUARY 19, 1982

The Government of the United States of America and
The Government of the Kingdom of Belgium,

Considering that it is necessary to improve the manner of determining rights to benefits under Article 11 of the Agreement on Social Security between the United States of America and the Kingdom of Belgium, signed February 19, 1982,

Agree as follows:

Article 1

The final Protocol to the Agreement shall be amended by adding the following new paragraph 9:

"9. When entitlement to a benefit under United States laws is established in accordance with the provisions of Article 9.1 of the Agreement, the requirements of Article 10 and Article 11.3 shall be considered to be met if the agency of the United States (a) computes the theoretical basic benefit amount in accordance with United States laws based on the worker's periods of coverage and average earnings credited exclusively under United States laws, and (b) computes the pro rata basic benefit amount by applying to the theoretical basic benefit amount the ratio of the duration of the worker's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws."

Article 2

This additional Protocol shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Brussels on 23rd of November, 1982, in duplicate in the English, French and Dutch languages, the three texts being equally authentic.

For the Government of the United States of America:	Charles H. Price II
For the Government of the Kingdom of Belgium:	J. L. Dehaene

AGREEMENT

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND

THE GOVERNMENT OF CANADA,

RESOLVED TO CO-OPERATE IN THE FIELD OF SOCIAL SECURITY, HAVE DECIDED TO CONCLUDE AN AGREEMENT FOR THIS PURPOSE,

AND,

HAVE AGREED AS FOLLOWS:

PART I

GENERAL PROVISIONS

Article I

For the purpose of this Agreement:

(1) "Territory" means, "as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Canada, the territory of Canada";

(2) "National" means, "as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Canada, a citizen of Canada";

(3) "Laws" means "the laws and regulations specified in Article II";

(4) "Competent Authority" means, "as regards the United States, the Secretary of Health and Human Services, and "as regards Canada, the Minister or Ministers of the Crown responsible for the administration of the laws specified in Article II(1)(b)";

(5) "Agency" means, "as regards the United States, the Social Security Administration, and "as regards Canada, for all matters other than those related to contributions: the Department of National Health and Welfare; for matters related to contributions: the Department of National Revenue-Taxation";

(6) "Period of coverage" means "a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage";

(7) "Benefit" means "any benefit provided for in the laws of either Contracting State";

(8) "Stateless person" means "a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954";

(9) "Refugee" means "a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967".

Article II

(1) For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(b) As regards Canada:

(i) the Old Age Security Act and regulations made thereunder, and

(ii) the Canada Pension Plan and regulations made thereunder.

(2) Unless otherwise provided in this Agreement, the applicable laws referred to in paragraph (1) of this Article do not include treaties or other agreements concluded between either Contracting State and a third State and laws or regulations promulgated for their implementation.

(3) This Agreement shall also apply to future laws amending the laws specified in paragraph (1) of this Article.

(4) Provincial social security legislation may be dealt with in understandings as specified in Article XX.

Article III[1]

Unless otherwise provided, this Agreement shall apply to:

(a) nationals of either Contracting State,

(b) refugees,

(c) stateless persons,

(d) other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article IV

(1) Unless otherwise provided in this Agreement, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment, with respect to the payment of benefits, with the nationals of that Contracting State.

(2) Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.

(3) Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article III who reside in the territory of the other Contracting State.

(4) As regards the laws of Canada, paragraph (1) of this Article is extended to persons designated in Article III(e).

PART II

PROVISIONS ON COVERAGE

Article V

(1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Contracting States shall, in respect of that work, be subject to the laws of only that Contracting State.

(2)(a) Where an employed person is covered under the laws of one of the Contracting States in respect of work performed for an employer having a place of business in the territory of that Contracting State and is then required by that employer to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State does not exceed 60 months.

(b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Contracting State for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Contracting States, subparagraph (a) shall also apply:

(i) where the employer does not have a place of business in the territory of the first Contracting State, or

(ii) where the period of work in the other Contracting State exceeds or is expected to exceed 60 months.

---

[1] As in original. Probably should be italicized.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963, unless such persons have waived their immunities and privileges with respect to the payment of social security contributions.

(4)(a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Contracting States.

(b) Where a person employed in the Government service of one of the Contracting States is covered under the laws of both Contracting States in respect of that employment, the following rules shall apply:

(i) A person in the Government service of one Contracting State who is sent to work within the territory of the other Contracting State shall be subject to the laws of only the first Contracting State in respect of that service;

(ii) A person hired locally to work in the Government service of one Contracting State within the territory of the other Contracting State shall be subject to the laws of only the other Contracting State in respect of that service.

(c) For the purposes of this paragraph, "Government service" means,

(i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;

(ii) as regards Canada, service in the employ of the Government of Canada or a Province of Canada or a Canadian municipality.

(5) Where, but for this Article, a person would be covered under United States laws as well as under the Canada Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Canada Pension Plan if that person is a resident of Canada, and only to United States laws in any other case.

(6) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Canada if that person is considered to be resident in Canada for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.

(7) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of an activity that is considered to be self-employment by one of the Contracting States and employment by the other Contracting State, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Contracting State and according to the provisions of this Article respecting employment in any other case.

(8) Where, by virtue of this Article, a person would be subject to the laws of Canada but coverage is not effected under those laws, the person shall be subject to United States laws.

(9) The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.

(10) Where a person covered under the laws of a Contracting State in accordance with this Agreement is also covered under the laws of the other Contracting State or a third State in accordance with the provisions of an agreement between a Contracting State and a third State, the Competent Authorities of the two Contracting States may agree to exclude the person from the application of this Agreement.

(11) The Competent Authorities of the two Contracting States may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.

(12) The application of this Article shall be subject to such rules as the Competent Authorities of the two Contracting States may prescribe through arrangements made pursuant to Article XII(a) of this Agreement.

Article VI

(1) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to the laws of Canada, or the comprehensive pension plan of a province, during any period of residence in the territory of the United States, that period of residence, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

(2) Any calendar quarter during which a spouse or a dependant of a person referred to in Article V(2) is credited with a period of coverage under United States laws shall not be counted as residence in Canada for the purposes of the Old Age Security Act.

(3) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to United States laws during any period of residence in the territory of Canada, that period, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period shall not be treated as residence in Canada for the purposes of the Old Age Security Act.

(4) Except as otherwise provided in this Article, periods during which the spouse or dependant referred to in paragraph (3) of this Article is contributing to the Canada Pension Plan or the comprehensive pension plan of a province as a result of employment or self-employment shall be treated as periods of residence in Canada for the purposes of the Old Age Security Act.

(5) Except as otherwise provided in this Article, any person who resides in the United States, is employed in Canada and is subject to the Canada Pension Plan or the comprehensive pension plan of a province shall be credited with one year of residence under the Old Age Security Act for each year of contributions under the Canada Pension Plan or the comprehensive pension plan of a province.

(6) If a person referred to in paragraph (4) or (5) of this Article performs services which are covered as employment or self-employment under United States laws and simultaneously performs other services which are covered as employment or self-employment under the Canada Pension Plan or a comprehensive pension plan of a province, that period of employment or self-employment shall not be treated as a period of residence for the purposes of the Old Age Security Act.

PART III

Provisions on Benefits

Chapter 1

Provisions Applicable to the United States

Article VII

(1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Canada Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Canada Pension Plan certified as creditable by the agency of Canada; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

(4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

Chapter 2

Provisions Applicable to Canada

Article VIII

(1) In this Article, "pension" means a monthly pension under Part I of the Old Age Security Act.

(2)(a) If a person is entitled to a pension under paragraph 3(1)(a) or (b) of the Act, the totalization provisions of subparagraphs (3)(a) and (b) of this Article may be used, if necessary, to accumulate the required 20 years of residence in Canada for payment of a pension in the United States. Only a partial pension calculated in accordance with the Act may be paid.

(b) If a person is entitled to a partial pension under subsection 3(1.1) of the Act, that pension may be paid in the United States if the periods totalized according to subparagraphs (3)(a) and (b) of this Article equal not less than 20 years.

(3)(a) If a person is not entitled to a pension under the Old Age Security Act because of insufficient periods of residence, entitlement to a pension may be determined by totalizing periods of residence in Canada on or after January 1, 1952 and after the attainment of age 18, and periods of coverage under United States laws as specified in subparagraph (3)(b) of this Article, but where the periods coincide, only one period shall be counted.

(b) For the purposes of establishing entitlement to a pension by means of totalization, a quarter of coverage under United States laws on or after January 1, 1952 and after the attainment of age 18, shall be counted as three months of residence in Canada.

(c) The agency of Canada shall calculate the amount of the pro-rated pension at the rate of 1/40th of the full pension for each year of residence in Canada which is recognized as such in subparagraph (3)(a) of this Article or deemed as such under Article VI of this Agreement.

(4) If the total duration of the periods of residence completed in Canada in accordance with subparagraph (3)(a) of this Article or Article VI of this Agreement is less than one year, the agency of Canada shall not pay a pension in respect of those periods.

Article IX

(1) In this Article, "spouse's allowance" means a partial spouse's allowance under Part II.1 of the Old Age Security Act.

(2) If a person is not entitled to a spouse's allowance under the Act because of insufficient periods of residence, entitlement to a spouse's allowance may be determined by totalizing periods of residence in accordance with subparagraph (3)(a) of Article VIII and periods of coverage under United States laws in accordance with subparagraph (3)(b) of Article VIII, but where the periods coincide, only one period shall be counted.

Article X

Article IV of this Agreement does not affect the provisions of the Old Age Security Act governing the payment of the guaranteed income supplement and the spouse's allowance to persons not resident in Canada.

Article XI

(1) In this Article, "benefit" means

(a) an orphan's benefit or a disabled contributor's child's benefit,
(b) a death benefit,
(c) a disability pension, or
(d) a survivor's pension payable under the Canada Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Canada Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Contracting States in accordance with paragraph (3) of this Article, to the extent that they do not coincide.

(3)(a) Subject to the provisions governing the contributory period under the Canada Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under United States laws shall be deemed to be a year in which contributions were made under the Canada Pension Plan.

(b) The agency of Canada shall calculate the earnings-related portion of the benefit directly and exclusively on the basis of the periods of coverage completed under the Canada Pension Plan.

(c) The amount of the flat-rate benefit under the Canada Pension Plan is the amount obtained by multiplying:

(i) the amount of the flat-rate benefit determined under the provisions of the Canada Pension Plan; by

(ii) the ratio that the periods of coverage under the Canada Pension Plan represent in relation to the total of the periods of coverage under the Canada Pension Plan and of only those periods of coverage under United States laws required to satisfy the minimum requirements for entitlement under the Canada Pension Plan.

PART IV

Miscellaneous Provisions

Article XII

The Competent Authorities of the two Contracting States shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article XIII

The Competent Authorities and agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement.

Article XIV

(1) Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XV

(1) The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official languages of either Contracting State.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in an official language of the other Contracting State.

Article XVI

(1) A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant: (a) requests that it be considered an application under the laws of the other Contracting State; or (b) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

(2) An application for benefits under the laws of one Contracting State which is filed with the agency of the other Contracting State in accordance with paragraph (1) of this Article, shall be adjudicated by the agency of the first Contracting State under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

(4) The provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article XVII

(1) A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting State. The appeal shall be dealt with according to the appeal procedure of the laws of the Contracting State whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same prescribed period with the agency of the other Contracting State, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Contracting State.

Article XVIII

Unless disclosure is required under the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State is confidential and shall be used exclusively for the purpose of implementing this Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article XIX

(1) No provision of this Agreement shall confer any right

(a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement, or

(b) to receive a lump-sum death benefit if the person died before the entry into force of the Agreement.

(2) In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Agreement, except that neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

(4) This Agreement shall not result in the reduction of benefit amounts because of its entry into force.

(5) The period of work referred to in the last sentence of Article V(2)(a) shall be measured beginning on or after the date on which this Agreement enters into force.

Article XX

The Competent Authority of the United States and the authorities of the provinces of Canada may conclude understandings concerning any social security legislation within the provincial jurisdiction insofar as those understandings are not inconsistent with the provisions of this Agreement.

Article XXI

(1) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

(2) If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article XXII

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Ottawa this 11th day of March 1981, in the English and French languages, each version being equally authentic.

For the Government of the United States of America:
(signed) ALEXANDER M. HAIG.
For the Government of Canada:
(signed) MARK MACGUIGAN.
Monique Begin.

ADMINISTRATIVE ARRANGEMENT

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA, CONCLUDED ON MARCH 11, 1981

In conformity with Article XII(a) of the Agreement on Social Security between the Government of the United States of America and the Government of Canada, entered into on March 11, 1981, and hereinafter referred to as "the Agreement", the competent authorities:

—For the United States of America:
RICHARD S. SCHWEIKER,
Secretary of Health and Human Services.

—For Canada:
Madame MONIQUE BEGIN,
Minister of National Health and Welfare.

have agreed on the following provisions:

CHAPTER 1

GENERAL PROVISIONS

Paragraph 1

The following are designated as liaison agencies for the purposes of administering the Agreement and this Administrative Arrangement:
For the United States,
the Social Security Administration, and
For Canada,
Income Security Programs,
Department of National Health and Welfare.

Paragraph 2

Terms used in this Administrative Arrangement have the same meaning as in the Agreement.

Paragraph 3

The agencies of the Contracting States will agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

CHAPTER 2

PROVISIONS ON COVERAGE

Paragraph 4

1. Where the laws of a Contracting State are applicable in accordance with Article V of the Agreement, the agency of that Contracting State will issue, in accordance with rules and procedures to be agreed upon by the agencies of the two Contracting States and at the request of an employer, employee or self-employed person, a certificate stating that the concerned employee or group of employees or self-employed person is covered by those laws. The certificate will be evidence that the employee, group of employees or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in subparagraph 4.1 will be issued
—In the United States: By the Social Security Administration; and
—In Canada: By the Accounting and Collections Division, Department of National Revenue-Taxation.

CHAPTER 3

PROVISIONS ON BENEFITS

Paragraph 5

1. The liaison agency of the Contracting State with which an application for benefits is first filed in accordance with Article XVI of the Agreement will inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It will also transmit documents and such other available information as may be necessary for the liaison agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part III of the Agreement. In the case of an application for disability benefits, it will, in particular, transmit relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Contracting State which receives an application filed with the liaison agency of the other Contracting State will, without delay, provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The liaison agency of the Contracting State with which an application for benefits has been filed will verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified will be agreed upon by the liaison agencies.

Paragraph 6

1. In the application of Article VII of the Agreement, the Canadian liaison agency will notify the United States liaison agency of the years in which a person is credited with coverage under the Canada Pension Plan along with such other information as may be necessary to determine the amount of the person's benefit.

2. Benefits awarded by the liaison agency of the United States under Article VII of the Agreement will be recomputed in accordance with United States laws to take account of additional periods of coverage completed under the laws of either Contracting State. An application for such a recomputation will be required only where the additional periods of coverage have been completed under Canadian laws.

3. Periods of coverage completed after the last computation base year provided under United States laws will not be considered in determining the ratio referred to in Article VII(3) of the Agreement.

Paragraph 7

In the application of Chapter 2 of Part III of the Agreement, the United States liaison agency will notify the Canadian liaison agency of the periods of coverage which a person has completed under United States laws, along with such other information as may be necessary to determine the amount of the person's benefit.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Paragraph 8

In accordance with measures to be agreed upon pursuant to Paragraph 3 of this Administrative Arrangement, the liaison agency of one Contracting State will, upon request of the liaison agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Paragraph 9

The liaison agencies of the two Contracting States will exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data will include the number of beneficiaries and the total amount of benefits, by type of benefit.

Paragraph 10

This Administrative Arrangement will take effect on the date of entry into force of the Agreement and will have the same period of duration.

Done in duplicate at Washington, this 22nd day of May 1981, in English and French, both texts being equally authentic.

For the Government of the United States of America:
(Signed) RICHARD S. SCHWEIKER.

For the Government of Canada:
(Signed) MONIGUE BEGIN.

SUPPLEMENTARY AGREEMENT

SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY

The Government of the United States of America and the Government of Canada,

Having considered the Agreement on Social Security between the United States of America and Canada, signed March 11, 1981, (hereinafter referred to as the "Agreement") and the Administrative Arrangement for the Implementation of the Agreement, signed on May 22, 1981, (hereinafter referred to as the "Administrative Arrangement"), and

Having recognized the need to improve the manner of determining the rights to benefits under the Agreement,

Have agreed as follows:

ARTICLE 1

Paragraph (3) of Article VII of the Agreement shall be deleted and replaced by the following new paragraph:

> "(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of the person's periods of coverage credited under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount."

ARTICLE 2

Paragraphs 6.2 and 6.3 of the Administrative Arrangement shall be deleted and Paragraph 6.1 shall be redesignated as Paragraph 6.

ARTICLE 3

This Supplementary Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

In witness whereof, the undersigned, duly authorized to that effect, have signed this Supplementary Agreement.

Done in duplicate at Ottawa, this 10th day of May 1983 in the English and French languages, both texts being equally authentic.

For the Government of the United States of America:

(Signed)
PAUL ROBINSON.

For the Government of Canada:

(Signed)
MONIQUE BEGIN.

UNDERSTANDING

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF QUEBEC

Resolved to cooperate in the field of social security,

Desirous of concluding an Understanding to facilitate the application of a mutually beneficial arrangement in this field,

In view of the Social Security Agreement between Canada and the United States signed on March 11, 1981,

Have agreed as follows:

PART I

General Provisions

Article I

For the purpose of this Understanding:

(1) "Territory" means, "as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Quebec, the territory of Quebec;"

(2) "National" means, "as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Quebec, a citizen of Canada residing in Quebec or, if not residing therein, who is subject or has been subject to the laws specified in Article II(1)(b);"

(3) "Laws" means, "the laws and regulations specified in Article II;"

(4) "Competent Authority" means, "as regards the United States, the Secretary of Health and Human Services, and" "as regards Quebec, the Minister or Ministers responsible for the application or the administration of the laws specified in Article II(1)(b);"

(5) "Agency" means, "as regards the United States, the Social Security Administration, and" "as regards Quebec, for matters related to the collection of contributions, the Ministere du Revenu du Quebec; for all other matters, the Regie des rentes du Quebec;"

(6) "Period of coverage" means, "a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;"

(7) "Benefit" means, "any benefit provided for in the laws of either Party;"

(8) "Stateless person" means, "a person defined as a stateless person in Article I of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;"

(9) "Refugee" means, "a person defined as a refugee in Article I of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967."

Article II

(1) For the purpose of this Understanding, the applicable laws are:

(a) as regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(b) as regards Quebec: "The Act concerning the Quebec Pension Plan."

(2) Unless otherwise provided in this Understanding, the applicable laws referred to in paragraph (1) of this Article do not include undertakings entered into by the United States or Quebec with third parties, or laws and regulations promulgated for the implementation of such undertakings.

(3) This Understanding shall also apply to laws amending the laws specified in paragraph (1) of this Article and to agreements between the Government of Quebec and the Government of Canada concluded for purposes of coordinating their respective pension plans.

Article III

Unless otherwise provided, this Understanding shall apply to:

(a) Nationals,

(b) Refugees,

(c) Stateless persons,

(d) Other persons with respect to the rights they derive from a national, a refugee, or a stateless person, and

(e) Nationals of a third party not included among the persons mentioned in paragraph (d) of this Article.

Article IV

(1) Unless otherwise provided in this Understanding, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Party shall, in the application of the laws of a Party, receive equal treatment with respect to the payment of benefits, with the nationals of that Party.

(2) Nationals of a Party who reside outside the territories of both Parties shall receive benefits provided by the laws of the other Party under the same conditions which the other Party applies to its own nationals who reside outside the territories of both Parties.

(3) Unless otherwise provided in this Understanding, the laws of a Party under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Party shall not be applicable to the persons designated in Article III who reside in the territory of the other Party.

(4) As regards the laws of Quebec, paragraph (1) of this Article is extended to persons designated in Article III(e).

PART II

PROVISIONS ON COVERAGE

Article V

(1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Parties shall, in respect of that work, be subject to the laws of only that Party.

(2)(a) Where an employed person is subject to the laws of one of the Parties in respect to work performed for an employer having a place of business in the territory of that Party and is then required by that employer to work in the territory of the other Party, the person shall be subject to the laws of only the first Party in respect of that work, as if it were performed in the territory of the first Party. The preceding sentence shall apply provided that the period of work in the territory of the other Party does not exceed 60 months.

(b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Party for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Parties, subparagraph (a) shall also apply:

(i) where the employer does not have a place of business in the territory of the first Party, or

(ii) where the period of work in the other Party[2] exceeds or is expected to exceed 60 months.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963, unless the immunities and privileges with respect to the payment of Social Security contributions of such persons have been waived, or such persons are among the persons mentioned in subparagraph (4)(b)(ii) of this Article.

(4)(a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Parties.

(b) Where a person is employed in the Government service of one of the Parties, the following rules shall apply:

(i) a person in the Government service of one Party who is sent to work within the territory of the other Party shall be subject to the laws of only the first Party in respect to that service;

(ii) a person hired locally to work for the United States Govenment in Quebec shall be subject to the laws of Quebec unless the person is a national of the United States or, since before entry into force of the Understanding, participated in the Civil Service Retirement System of the United States or other United States

---

[2] As in original. Probably should be "territory of the other Party".

Government-financed pension plan and has elected not to participate in the Quebec Pension Plan.

(c) For the purposes of this paragraph, "Government service" means,

(i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;

(ii) as regards Quebec, service in the employ of the Government of Quebec.

(5) Where, but for this Article, a person would be covered under United States laws as well as under the Act concerning the Quebec Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of the employment, be subject only to the Act concerning the Quebec Pension Plan if that person is a resident of Quebec or contributes to the Quebec Pension Plan while residing elsewhere in Canada, and only to United States laws in any other case.

(6) Where, but for the Article, a person would be covered under the laws of both Parties in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Quebec if that person is considered to be resident in Quebec for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.

(7) Where, but for this Article, a person would be covered under the laws of both Parties in respect of an activity that is considered to be self-employment by one of the Parties and employment by the other Party, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Party and according to the provisions of this Article respecting employment in any other case.

(8) Where, by virtue of this Article, a person would be subject to the laws of Quebec but coverage is not effected under those laws, the person shall be subject to United States laws.

(9) The Understanding shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.

(10) Where a person covered under the laws of a Party in accordance with the Understanding is also covered under the laws of the other Party or a third Party in accordance with the provisions of an undertaking entered into by the United States or by Quebec with a third Party, the Competent Authorities of the two Parties may agree to exclude the person from the application of this Understanding.

(11) The Competent Authorities of the two Parties may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.

PART III

PROVISIONS ON BENEFITS

CHAPTER 1

PROVISIONS APPLICABLE TO THE UNITED STATES

Article VI

(1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Act concerning the Quebec Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Act concerning the Quebec Pension Plan certified as creditable by the agency of Quebec; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of a worker's periods of coverage completed under United States

laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

(4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

CHAPTER 2

PROVISIONS APPLICABLE TO QUEBEC

Article VII

(1) In this Article, "benefit" means,

(a) a retirement pension[3]

(b) an orphan's benefit or a disabled contributor's child's benefit,

(c) a death benefit,

(d) a disability pension, or

(e) a survivor's pension

payable under the Act concerning the Quebec Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Quebec Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Parties in accordance with paragraph (3) of this Article, to the extent that they do not coincide.

(3) Subject to the provisions governing the contributory period under the Act concerning the Quebec Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under the laws of the United States shall be deemed to be a year in which contributions were made under the Act concerning the Quebec Pension Plan.

(4) The agency of Quebec shall calculate the benefit payable under the provisions of paragraph (2) preceding in the following manner:

(a) Compute the amount of the earnings-related benefit under the Act concerning the Quebec Pension Plan;

(b) Add to this benefit, the amount of the flat rate benefit under the Act concerning the Quebec Pension Plan adjusted by the ratio that the periods of coverage under the Act concerning the Quebec Pension Plan represent in relation to the contributory period, subject to the provisions governing such period under the Act concerning the Quebec Pension Plan.

PART IV

MISCELLANEOUS PROVISIONS

Article VIII

The Competent Authorities of the two Parties shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Understanding;

(b) Communicate to each other information concerning the measures taken for the application of this Understanding; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Understanding.

Article IX

The Competent Authorities and agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Understanding.

Article X

(1) Where the laws of a Party provide that any document which is submitted to the Competent Authority or an agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Party in accordance with its laws.

---

[3] As in original. Punctuation missing.

(2) Copies of documents which are certified as true and exact copies by the agency of one Party shall be accepted as true and exact copies by the agency of the other Party, without further certification. The agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XI

Benefits shall be payable without any deductions for administrative costs, transfer fees or any other expenses incurred for the payment of such benefits.

Article XII

(1) The Competent Authorities and agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Understanding. The correspondence may be in the official languages of either Party.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in the official language of the other Party.

Article XIII

(1) A written application for benefits filed with an agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant

(a) requests that it be considered an application under the laws of the other Party, or

(b) provides information, at the time of application, indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Party.

(2) An application for benefits under the laws of one Party, which is filed with the agency of the other Party in accordance with paragraph (1) of this Article, shall be adjudicated by the agency of the first Party under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Party be effective on a different date in the other Party within the limitations of and in conformity with the laws of the other Party.

(4) The provisions of Part III of this Understanding shall apply only to an application for benefits which is filed on or after the date this Understanding enters into force.

Article XIV

(1) A written appeal of a determination made by the agency of one Party may be validly filed with an agency of either Party. The appeal shall be dealt with according to the appeal procedure of the laws of the Party whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the agency of that Party, but which is instead filed within the same prescribed period with the agency of the other Party, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Party.

Article XV

Unless disclosure is required under the statutes of a Party, information about an individual which is transmitted, in accordance with the Understanding, to that Party by the other Party is confidential and shall be used exclusively for the purposes of implementing this Understanding. Such information received by a Party shall be governed by the statutes of that Party for the protection of privacy and confidentiality of personal data.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article XVI

(1) No provision of this Understanding shall confer any right:

(a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Understanding, or

(b) to receive a lump-sum death benefit if the person died before the entry into force of the Understanding.

(2) In the implementation of this Understanding, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Understanding, except that neither Party shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Understanding shall not affect rights arising under it.

(4) This Understanding shall not result in the reduction of the amounts of benefits already established because of its entry into force.

(5) The period of work referred to in the last sentence of Article V(2)(a) shall be measured beginning on or after the date on which this Understanding enters into force.

Article XVII

(1) This Understanding shall remain in force and effect until the first of the following dates:

December 31 of the calendar year following the year in which written notice of its denunciation is given by one of the Parties to the other Party;

or the date the Social Security Agreement between Canada and the United States signed on March 11, 1981 ceases to remain in force and effect.

(2) If this Understanding is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Parties shall make arrangements dealing with rights in the process of being acquired.

Article XVIII

This Understanding shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Understanding.

In witness whereof, the undersigned representatives of the Parties being duly authorized thereto, have signed the present Understanding.

Done at Quebec on March 30, 1983, in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the United States of America:

(Signed) George W. Jaeger.

For the Government of Quebec:

(Signed) Jacques Yvan Morin.

ADMINISTRATIVE ARRANGEMENT

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF QUEBEC ON SOCIAL SECURITY—MAY 11, 1981

In conformity with Article VIII(a) of the Understanding between the Government of the United States of America and the Government of Quebec on Social Security of this date, hereinafter referred to as "The Understanding", the following provisions have been agreed upon:

Chapter 1

General Provisions

Article 1

The following are designated as liaison agencies for the purposes of administering the Understanding and this Arrangement:

For the United States,

The Social Security Administration, and

For Quebec,

Le Secretariat de L'Administration des Ententes de
Securite Sociale

Article 2

Terms used in this Administrative Arrangement will have the same meaning as in the Understanding.

Article 3

The agencies of the Parties will agree upon joint procedures and forms necessary for the implementation of the Understanding and this Administrative Arrangement.

CHAPTER 2

PROVISIONS ON COVERAGE

Article 4

(1) Where the laws of a Party are applicable in accordance with Article V of the Understanding, the agency of that Party will issue, in accordance with procedures to be agreed upon and at the request of the employer, employee, or self-employed person, a certificate stating that the concerned employee, or self-employed person, is covered by those laws. The certificate will be evidence that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Party.

(2) The certificate referred to in poaragraph[4] (1) of this Article will be issued:

(i) In the United States: By the Social Security Administration.
(ii) In Quebec: By the Ministere du Revenu du Quebec.

CHAPTER 3

PROVISIONS ON BENEFITS

Article 5

(1) The liaison agency of the Party with which an application for benefits is first filed in accordance with Article XIII of the Understanding will inform the liaison agency of the other Party of this fact without delay, using forms established for this purpose. It will also transmit documents and such other available information as may be necessary for the liaison agency of the other Party to establish the right of the applicant to benefits according to the provisions of Part III of the Understanding. In the case of an application for disability benefits, it will, in particular, transmit relevant medical evidence in its possession concerning the disability of the applicant.

(2) The liaison agency of a Party which receives an application filed with the liaison agency of the other Party will without delay, provide the liaison agency of the other Party with such evidence and other available information as may be required to complete action on the claim.

(3) The liaison agency of the Party with which an application for benefits has been filed will verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified will be agreed upon by the liaison agencies.

(4) Certification by a liaison agency of information pertaining to civil status or vital statistics exempts the transmission of the probative documents to the other agency. The first agency shall furnish those documents or certified copies thereof which may be obtained upon request of the other agency.

Article 6

In the application of Article VI of the Understanding, the Quebec liaison agency will notify the United States liaison agency of the years in which a person is credited with coverage under the Act concerning the Quebec Pension Plan along with such other information as may be necessary to determine the amount of the person's benefit.

---

[4] As in original. Should be "paragraph".

Article 7

In the application of Chapter 2 of Part III of the Understanding, the United States liaison agency will notify the Quebec liaison agency of the periods of coverage which a person has completed under United States laws, along with such other information as may be necessary to determine the amount of the person's benefit.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Article 8

In accordance with measures to be agreed upon pursuant to Article 3 of this Administrative Arrangement, the liaison agency of one Party will, upon request of the liaison agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Understanding.

Article 9

Where administrative assistance is requested under the Understanding expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed in accordance with procedures to be agreed upon by the agencies.

Article 10

The liaison agencies of the two Parties will exchange statistics on the payments made to beneficiaries under the Understanding for each calendar year in a form to be agreed upon. The data will include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 11

This Administrative Arrangement will take effect on the date of entry into force of the Understanding and will have the same period of duration.

Done at Quebec on March 30, 1983, in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the United States of America:
(Signed) GEORGE W. JAEGER.

For the Government of Quebec:
(Signed) JACQUES YVAN MORIN.

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND GERMANY

* * * * * * *

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9542[5]

* * * * * * *

Agreement signed at Washington January 7, 1976;
Entered into force December 1, 1979.
With final protocol.
And administrative agreement
Signed at Washington June 21, 1978;
Entered into force October 30, 1979;
Effective December 1, 1979.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

The United States of America and the Federal Republic of Germany,

Being Desirous of regulating the relationship between them in the area of social security,

Have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement

1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;
2. "Laws" means the laws and regulations concerning the systems of social security specified in Article 2, paragraph 1;
3. "Competent Authority" means, as regards the United States of America, the Secretary of Health, Education, and Welfare, and as regards the Federal Republic of Germany, the Federal Minister of Labor and Social Affairs (Bundesminister für Arbeit und Sozialordnung);
4. "Agency" ("Träger") means the institution or authority responsible for implementing laws specified in Article 2, paragraph 1;
5. "Competent Agency" means the agency responsible for applying the laws in a specific case;
6. "Employment" means employment or self-employment as defined by the applicable laws;
7. "Period of coverage" ("Versicherungszeit") means a period payment of contributions or a period of earnings from employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. "Benefit" ("Rente") means an old-age, dependent, survivor, or disability insurance benefit provided by the applicable laws;
9. "Cash benefit" ("Geldleistung") means a benefit ("Rente") and any other cash payment provided by the applicable laws; and
10. "Benefit-in-kind" ("Sachleistung") means a rehabilitation benefit-in-kind provided by the applicable laws.

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   (a) as regards the Federal Republic of Germany, laws governing
   — Wage Earners' Pension Insurance
   — Salaried Employees' Pension Insurance

---

[5] This text is a copy of a Department of State publication. TIAS 9542 is the finding aid comparable to a citation to the United States Code. Regulations of the Secretary of Health and Human Services relating to totalization agreements are contained in Part 404, Subpart T, chapter III, title 20, Code of Federal Regulations.

— Miners' Pension Insurance
— Steelworkers' Supplementary Pension Insurance
— Farmers' Old Age Benefits; and
(b) as regards the United States of America, laws governing
— the Federal Old-Age, Survivors and Disability Insurance Program.

2. Laws within the meaning of paragraph 1 of this Article shall not include laws resulting for one Contracting State from other international treaties or supranational legislation, or from laws promulgated for their implementation.

Article 3

Unless otherwise provided, the present Agreement shall apply to

(a) nationals of a Contracting State within the meaning of Article XXV, paragraph 6, of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany of October 29, 1954 and of paragraph 22 of the Protocol thereto,[6] with the proviso that henceforth the term "Certificate of Residence" (Heimatschein) shall be replaced by the term "Certificate of Nationality" (Staatsangehörigkeitsausweis),

(b) refugees within the meaning of Article 1 of the Convention on the Status of Refugees dated July 28, 1951[7] and the Protocol to that Convention dated January 31, 1967,[8]

(c) stateless persons within the meaning of Article 1 of the Convention on the Status of Stateless Persons dated September 28, 1954,[9]

(d) other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or a stateless person within the meaning of this Article, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article 4

1. Unless otherwise specified in the present Agreement, the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of either Contracting State shall in the application of the laws of one Contracting State receive equal treatment with the nationals of that Contracting State.

2. Nationals of one Contracting State who ordinarily reside outside of the territories of both Contracting States shall be granted the cash benefits and benefits-in-kind provided by the laws of the other Contracting State under the same conditions which the other contracting State applies to its own nationals who ordinarily reside outside of the territories of both Contracting States.

Article 5

Unless otherwise provided in this Agreement, the laws of one Contracting State which require that entitlement to or payment of cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of the other Contracting State.

Article 6

1. Except as otherwise provided in this Article, persons who have employment within the territory of one of the Contracting States shall be subject to the laws on compulsory coverage of only that Contracting State even when the employer is located in the territory of the other Contracting State.

2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment.

3. In the case of the employment of a person as an officer or member of a crew of a sea-going vessel which has been granted the right to fly the flag of the Federal Republic of Germany, a German aircraft, an American vessel, an American aircraft, a vessel which has been granted the right to fly the flag of the Federal Republic of

---

[6] TIAS 3593; 7 UST 1866, 1909.
[7] 189 UNTS 152.
[8] TIAS 6577; 19 UST 6223.
[9] 360 UNTS 136.

Germany and is at the same time an American vessel under United States laws, or of an aircraft which is a German aircraft but which is treated as an American aircraft under United States laws, the following rules shall apply with regard to the laws on compulsory coverage:

(a) If the person is subject to the laws of only one of the Contracting States, he shall remain subject to those laws.

(b) If the person is a national of one of the Contracting States and subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State of which he is a national.

(c)(1) If the person is a national of both Contracting States or is a member of a group specified in Article 3(b), (c) or (e) and is subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State in whose territory he ordinarily resides.

(2) If he does not ordinarily reside in the territory of either Contracting State, he and his employer may apply for an exemption from the laws on compulsory coverage of one of the Contracting States under the procedure provided in paragraph 5 of this Article.

(d) A person who is a national of one Contracting State employed on the vessel or aircraft of the other Contracting State and who is not otherwise subject to the laws on compulsory coverage of either Contracting State shall be subject to the laws on compulsory coverage of the other Contracting State.

4. (a) A national of one of the Contracting States employed by that Contracting State in the territory of the other Contracting State employed by that Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(b) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he does not ordinarily reside, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(c) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he ordinarily resides, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the other Contracting State.

5. Upon application of a person specified in the preceding paragraphs of this Article, except paragraph 3(c)(2), and his employer, or upon application of a self-employed person, the Competent Authority of the Contracting State from whose laws on compulsory coverage the exemption is desired may grant the exemption, if the person and his employer, or the self-employed person, will be subject to the laws on compulsory coverage of the other Contracting State.

PART II

Benefit Insurance System

Article 7

1. Where periods of coverage have been completed under the laws of both Contracting States, the Agency which determines the entitlement to cash benefits and benefits-in-kind under its laws shall take account of periods of coverage which are creditable under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its own laws.

2. This Agreement shall not result in entitlement to a benefit under the laws of a Contracting State unless a minimum period of coverage has been completed by a person under its laws and the completed period of coverage alone does not result in entitlement to benefits. In the application of United States laws, periods of coverage totaling 6 quarters of coverage shall be the required minimum, and, in the application of German laws, periods of coverage totaling 18 months shall be the required minimum.

3. Where a person's periods of coverage are less than the minimum period required by paragraph 2 of this Article under the laws of one Contracting State, those periods of coverage, whether or not consecutive, shall nevertheless be considered by the Agency of the other Contracting State for purposes of the computation of a benefit, as if they were periods of coverage under its own laws, provided that

(a) the person has the minimum period required by paragraph 2 under the laws of the other Contracting State and has entitlement for benefits with or without the application of paragraph 1 of this Article under the laws of the other Contracting State, or

(b) the person is entitled to benefits under the laws of the other Contracting State with less than the minimum period required by paragraph 2.

Article 8

The following provisions shall apply to the Federal Republic of Germany:

1. The periods of coverage to be considered in accordance with Article 7 shall be taken into account by the insurance system whose Agency is competent for determining a persons' benefit if only the German laws were applied. If under this provision the Competent Agency is the Miners' Pension Insurance system, the periods of coverage completed under United States laws shall be taken into account by the Miners' Pension Insurance system if the periods were completed underground in a mine.

2. Periods of coverage completed under United States laws which are to be considered by the Competent Agency for the computation of the benefit payable by it, in accordance with Article 7, paragraph 3, shall only increase the number of creditable insurance years under German laws.

3. In determining the benefit computation base (Rentenbemessungsgrundlage), only periods of coverage considered under German laws shall be taken into account.

4. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, only half of the benefit amount which is attributable to deemed periods of coverage (Zurechnungszeit) shall be payable.

5. The following rules shall apply where an amount is payable as a supplement to a child; these rules shall also apply if the child's supplement is an integral part of the orphan's pension:

(a) If a supplement is payable under German laws without the application of Article 7, paragraph 1, but no child's insurance benefit is payable under United States laws, the supplement shall be payable in full.

(b) If a supplement is payable under German laws with or without the application of Article 7, paragraph 1, and a child's insurance benefit is payable under United States laws, one-half of the supplement shall be payable.

(c) If a supplement is payable under German laws only with the application of Article 7, paragraph 1, and no child's insurance benefit is payable under United States laws, one-half of the supplement shall be payable.

6. For purposes of terminating the right to the compensatory cash benefit for a miner who has been separated from his mining occupation (Knappschaftsausgleichsleistung), a United States mining establishment shall be treated as equivalent to a German mining establishment.

7. In the case of a self-employed craftsman, whose liability status for compulsory coverage is conditional upon payment of a minimum number of contributions, periods of coverage completed under United States laws shall be taken into account to determine whether the craftsman is liable.

Article 9

The following provisions shall apply to the United States of America:

1. Where there is eligibility for a benefit under United States laws by applying Article 7, paragraph 1, the Competent Agency shall first compute a theoretical Primary Insurance Amount taking into consideration the periods of coverage completed under the laws of the two Contracting States as if all these periods of coverage had been completed under United States laws. The Competent Agency shall then compute a pro rata Primary Insurance Amount based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Any benefits payable under United States laws on the basis of an earnings record where a pro rata Primary Insurance Amount has been computed will be paid on the basis of that pro rata Primary Insurance Amount.

2. Periods during which a person was determined by a Competent German Agency to be totally disabled under German laws shall, when it is to his advantage, be excluded in determining whether he meets the insured status requirements under United States laws and in computing a Primary Insurance Amount under this Agreement.

3. For the purposes of computing a person's theoretical Primary Insurance Amount, the Competent Agency shall take into account, if it is to his advantage, his earnings in any year during periods of coverage completed under German laws, as if they had been completed under United States laws.

PART III

Miscellaneous Provisions

Chapter 1

Administrative Cooperation

Article 10

The Competent Authorities, Agencies and associations of the Agencies of the Contracting States shall assist each other in applying this Agreement and in implementing each other's laws as if they were applying their own laws. This assistance shall be free of charge subject to exceptions to be agreed upon by the Contracting States.

Article 11

1. A final decision of a Court or a ruling by a Competent Authority or an Agency of a Contracting State, concerning a matter arising under its laws, which is enforceable under its laws, shall be recognized by the other Contracting State. A Contracting State may refuse recognition if the decision or ruling is contrary to its public policy including its requirements for due process of law.

2. The final decisions and rulings referred to in paragraph 1 shall be enforced under the laws specified in Article 2, paragraph 1, in the territory of the Contracting State in which the decisions or rulings are recognized.

Article 12

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an Agency of the other Contracting State in accordance with its laws.

2. A document or a copy of a document certified as authentic which is accepted as authentic by the Competent Authority or an Agency of one Contracting State shall be accepted as authentic by the Competent Authority or an Agency of the other Contracting State without further certification.

Article 13

1. The Competent Authorities and the Agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected by a Competent Authority or an Agency because it is in the official language of the other Contracting State.

Article 14

1. An application in writing or other document presented to the Competent Authority or an Agency of a Contracting State shall have the same effect as if it were presented to the Competent Authority or an Agency of the other Contracting State.

2. A person who files an application for cash benefits under the laws of a Contracting State may request that it not be treated as an application for cash benefits under the laws of the other Contracting State, or that it be effective on a different date in the other Contracting State, within the limitations of and in conformity with the laws of the other Contracting State.

Article 15

The consular officers of a Contracting State at diplomatic or consular posts in the territory of the other Contracting State, at the request of a person who is a national of the first Contracting State, may take measures necessary to safeguard and maintain the rights of that person. The person's authorization need not be proven.

Chapter 2

Implementation of the Agreement

Article 16

1. The Competent Authorities of the Contracting States shall, by mutual agreement, establish administrative procedures which are required to implement this Agreement. They shall inform each other of any amendments or additions to their laws.

2. Liaison agencies designated for the implementation of this Agreement are:

(a) In the Federal Republic of Germany—

(1) for the Wage Earners' Pension Insurance system, the Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Institution for Hamburg), Hamburg,

(2) for the Salaried Employees' Pension Insurance system, the Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Salaried Employees), Berlin,

(3) for the Miners' Pension Insurance system, the Bundesknappschaft (Federal Miners' Insurance Institution), Bochum, and

(4) for the Steelworkers' Supplementary Pension Insurance system, the Landesversicherungsanstalt für das Saarland (Regional Insurance Institution for the Saarland), Saarbrücken;

(b) In the United States of America—
the Social Security Administration.

Article 17

An Agency of a Contracting State may validly pay cash benefits to a person in the territory of the other Contracting State in the currency of its own State or of the other Contracting State. If the cash benefits are paid in the currency of the other Contracting State, the currency conversion shall be at the exchange rate in force on the day the remittance is made.

Article 18

1. (a) Where a German Agency has made an overpayment of cash benefits to a person, the amount of the overpayment may be withheld for the account of the German Agency by the United States Agency from a cash benefit payable by it on the earnings record of the same person, within the limits of the United States laws.

(b) In case of payment of an advance or provisional cash benefit to a person by a German Agency which is more than the amount due, the United States Agency shall withhold for the account of the German Agency an amount equal to the excess amount paid from any cash benefits payable by it on the earnings record of this same person.

2. (a) Where the United States Agency has made an overpayment of cash benefits on the earnings record (Versicherungskonto) of a person, the amount of the overpayment may be withheld for the account of the United States Agency by a German Agency from a cash benefit payable by it to the same person, within the limits of the German laws.

(b) In case of payment of an advance or provisional cash benefit on the earnings record (Versicherungskonto) of a person by the United States Agency which is more than the amount due, a German Agency shall withhold for the account of the United States Agency an amount equal to the excess amount paid from any cash benefits payable by it to the same person.

Article 19

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities it shall, at the request of either Contracting State, be submitted for arbitration in accordance with the following procedures:

(a) An arbitration board shall be established on an ad hoc basis with each Contracting State appointing one member, and both members agreeing on a citizen from a third North Atlantic Treaty Organization member state as chairman who shall be appointed by the governments of the two Contracting States. The members shall be appointed within two months, and the chairman within three months, after one Contracting State has informed the other that it will refer the dispute to an arbitration board.

(b) If the deadlines mentioned in paragraph 2(a) are not met, each Contracting State may, in the absence of other agreements, ask the Secretary General of the North Atlantic Treaty Organization to make the necessary appointments. If the Secretary General is a national of one of the Contracting States or is prevented from acting for another reason, the Deputy Secretary General shall make the appointments. In case the Deputy Secretary General also is a national of one of the two Contracting States or is prevented from acting for another reason, the next Assistant Secretary General following in rank by protocol who is not a national of one of the two Contracting States and who is not prevented from acting for another reason, shall make the appointments.

(c) The arbitration board shall make its decision by majority vote on the basis of the agreements existing between the parties and general international law. Its decisions shall be binding on both Contracting States. Each Contracting State shall bear the cost for its member, as well as for its representation in the proceedings before the arbitration board; the cost for the chairman as well as other expenses, shall be shared equally between the Contracting States. The arbitration board can make a different decision concerning the allocation of expenses. In all other respects the arbitration board shall establish its own rules of procedure.

Part[10] IV

Transitional and Final Provisions

Article 20

1. This Agreement shall not establish any claim to payment of cash benefits for any period before its entry into force.

2. In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant under the laws occurring before the entry into force of this Agreement.

3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

4. Cash benefits to which there was entitlement before the entry into force of this Agreement may be recomputed under its provisions. At least the amount of the cash benefits previously payable shall continue to be payable after the recomputation.

Article 21

The attached Final Protocol shall form an integral part of this Agreement.

Article 22

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 23

1. This Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.

2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.[11]

Article 24

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of cash benefits acquired under it shall be retained; rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and affixed thereto their seals.

---

[10] As in original. Probably should be "PART".

[11] Dec. 1, 1979.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: DAVID MATHEWS

FOR THE FEDERAL REPUBLIC OF GERMANY: VON STADEN
WALTER ARENDT

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between the United States of America and the Federal Republic of Germany, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to Article 1, paragraph 21 of the Agreement: The term "laws" shall include the regulations adopted by the German Agencies (Trager) relating to the systems of social security specified in Article 2, paragraph 1, of the Agreement.

2. With reference to Article 2 of the Agreement:

(a) Regarding Article 2, paragraph 1(b), of the Agreement, with respect to the United States of America, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program are title II of the Social Security Act of 1935, as amended,[12] and regulations promulgated under the authority provided therein, except sections 226 and 228 of that title and regulations pertaining to those sections, and Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 as amended.

(b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Benefit system of the Federal Republic of Germany.

(c) If under the laws of one of the Contracting States the requirements for the application of another Convention or a supranational regulation are fulfilled in addition to the requirements for the application of this Agreement, the Agency of this Contracting State shall disregard the other Convention or supranational regulation when applying this Agreement.

(d) Article 2, paragraph 2, of the Agreement and paragraph 2(c) of this Protocol shall not apply if the social security laws resulting for the Federal Republic of Germany from international treaties or supranational law or designed to implement such treaties or law contain provisions relating to the apportionment of insurance burdens.

3. With reference to Article 4 of the Agreement:

(a) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

(b) German laws which guarantee participation of the insured and of the employers in the organs of self-government of the Agencies and of their associations as well as in the adjudication of social security matters shall remain unaffected.

4. With reference to Article 5 of the Agreement:

(a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall remain unaffected.

(b) German laws concerning the granting of medical, occupational and supplementary rehabilitation measures by the Agencies of the Pension Insurance system shall remain unaffected.

(c) Article 5 of the Agreement shall also apply to United States laws under which payment of cash benefits is made dependent on physical presence in the territory of the United States.

5. With reference to Article 6 of the Agreement:

(a) Article 6 of the Agreement shall also apply to persons who are treated as employees under the laws specified in Article 2, paragraph 1(a), of the Agreement.

(b) Article 6, paragraph 4, of the Agreement shall apply to an employee of any German public employer.

(c) With respect to the United States of America, the term "employed by that Contracting State" in Article 6, paragraph 4(a), of the Agreement shall mean employed by the Federal Government or one of its instrumentalities, and the term "employee of the first Contracting State" in Article 6, paragraph 4, (b) and (c), of the Agreement shall mean an employee of the Federal Government or one of its instrumentalities.

---

[12] 49 Stat. 622; 42 U.S.C. §402.

(d) Article 6, paragraph 5, of the Agreement shall not apply to exemptions from United States laws of United States nationals who ordinarily reside in the territory of the United States of America.

6. With reference to Article 7 of the Agreement:

(a) Periods of coverage completed under United States laws shall not be taken into account for the grant of increments (Leistungszuschlag) provided under German laws governing the Miners' Pension Insurance system.

(b) Under German pension insurance, Article 7, paragraph 1, of the Agreement shall apply mutatis mutandis to cash benefits and benefits-in-kind which may be granted at the discretion of the Agency.

(c) Notwithstanding Article 7, paragraph 3, of the Agreement, the United States Agency shall not be required to take account of periods of coverage completed under German laws in the case of any person who is entitled to transitional benefits on the basis of Section 227 of the United States Social Security Act.

7. With reference to Article 8 of the Agreement:

(a) Where under German laws the receipt of a benefit entails exemption from compulsory insurance and preclusion from voluntary insurance, receipt of a corresponding benefit under the laws of the United States shall have the same effect.

(b) United States nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be eligible for voluntary insurance in the German pension insurance system if they have validly paid contributions for at least 60 months to this system or were eligible for voluntary insurance on the basis of transitional laws in force before October 19, 1972. This rule shall also apply to the persons specified in Article 3(b) and (c) of the Agreement who ordinarily reside in the territory of the United States of America.

(c) Upon application United States nationals may pay voluntary contributions to the German pension insurance system retroactively, if eligibility for continued voluntary insurance was abolished by the laws governing voluntary insurance which entered into force on October 19, 1972 because they were either ordinarily residing or domiciled outside the territory of the Federal Republic of Germany. Retroactive voluntary contributions may be made for periods from October 19, 1972 to the day of the entry into force of the Agreement provided that these periods are not already covered by contributions paid to the German pension insurance system. Events relevant to eligibility for a benefit (Eintritt des Versicherungsfalles) which arise within one year after the entry into force of the Agreement shall not preclude payment of retroactive voluntary contributions. An application can be validly made only during the five-years' period following the date of entry into force of this Agreement. The Competent Agency may accept payments by installments for a period of up to three years.

(d) United States nationals to whom contributions were refunded between October 19, 1972 and the date of entry into force of this Agreement, may repay such contributions upon application. Such repayment may only be made in the full amount of the contributions refunded; it shall have the effect of cancelling any entry of refund of contributions in the insurance record. Paragraph 7(c), the last three sentences shall apply accordingly.

8. In the implementation of the Agreement, German laws to the extent that they contain more favorable provisions for persons who have suffered damages because of their political attitude or because of their race, religion or ideology, shall remain unaffected.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both text being equally authentic.

FOR THE UNITED STATES OF AMERICA: DAVID MATHEWS

FOR THE FEDERAL REPUBLIC OF GERMANY: VON STADEN
WALTER ARENDT

[Text in German omitted.]

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America and the Government of the Federal Republic of Germany, In application of Article 16.1 of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement",

Have agreed as follows:

ARTICLE 1

For the purposes of the application of this Administrative Agreement, terms used in the Administrative Agreement shall have the meaning they have in the Agreement.

ARTICLE 2

The liaison agencies established under Article 16.2 of the Agreement and the Competent Agencies referred to in the second sentence of Article 3 of this Administrative Agreement with the participation of the Competent Authorities shall agree jointly upon uniform administrative measures, procedures, and forms for the implementation of the Agreement. The provisions of Article 16.1 of the Agreement shall not be affected.

ARTICLE 3

Where German laws do not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance System shall be responsible within the scope of that system for the determination and award of cash benefits, with the exception of medical, occupational, and supplementary rehabilitation benefits, provided that:

(a) periods of coverage have been completed or are creditable under German and United States laws; or

(b) the person eligible ordinarily resides in the territory of the United States of America; or

(c) the person eligible is a United States national ordinarily residing outside the territories of both Contracting States.

The jurisdiction of the German special institutions ("Sonderanstalten") shall not be affected.

ARTICLE 4

1. The Agency of the Contracting State to whose laws on compulsory coverage a person will remain subject in accordance with Article 6 of the Agreement shall issue to the person or his employer a certificate to that effect when requested to do so by the person or his employer.

(a) In the Federal Republic of Germany that certificate shall be issued by the sickness insurance agency to which pension insurance contributions are paid.

(b) In the United States of America the certificate shall be issued by the Social Security Administration.

2. In order to prove that a person is exempt from the laws on compulsory coverage of one Contracting State, it shall be necessary for the person or his employer to present the certificate referred to in paragraph 1 confirming that the person is subject to the laws on compulsory coverage of the other Contracting State.

3. Article 6.2 of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship, and the transfer is not expected to be permanent as evidenced by a contract or a written notice from the employer. In cases where the United States laws on compulsory coverage apply in accordance with Article 6.2 of the Agreement, but there is no provision under United States laws for contributions with respect to such coverage, Article 6.1 of the Agreement shall apply.

4. (a) In making a determination concerning an exemption from the laws on compulsory coverage of one Contracting State pursuant to Article 6.3(c)(2) or Article 6.5 of the Agreement, the nature and circumstances of the employment shall be taken into consideration. Before making the determination, the Competent Authority of the other Contracting State shall be given an opportunity to express an opinion; the opinion shall in particular address the issue of whether the person concerned and his employer will be made subject to the laws on compulsory coverage of the other Contracting State.

(b) With regard to the Federal Republic of Germany, if the person is not employed in its territory he shall be deemed to be employed at the place of his last previous employment. If the person was not employed previously in that territory, he shall be deemed to be employed at the place where the German Competent Authority has its seat.

(c) Subparagraphs (a) and (b) shall also apply to self-employed persons.

ARTICLE 5

1. The crediting of earnings in any year by the United States Agency under Article 9.3 of the Agreement for periods of coverage creditable under German laws shall be subject to the maximum creditable earnings limitation under United States laws for such year.

2. In applying the Agreement, the United States Agency shall take account of German periods of coverage occurring before 1937 or earnings based on such periods of coverage in accordance with United States laws.

3. (a) In determining eligibility for cash benefits under Article 7.1 of the Agreement, the United States Agency shall credit one quarter of coverage for every three months of coverage certified as creditable by the German Competent Agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(b) In determining eligibility for cash benefits and benefits-in-kind under Article 7.1 of the Agreement, the German Competent Agency shall credit three months of coverage for each quarter of coverage certified as creditable by the United States Agency to the extent that the months in any such quarter of coverage do not coincide with periods of coverage already credited as periods of coverage under German laws.

4. Regarding Article 7.3 of the Agreement, the United States Agency shall consider German periods of coverage which are less than the minimum required by Article 7.2 of the Agreement only if the person is not eligible for a benefit under United States laws without considering such periods of coverage.

5. Article 9.2 of the Agreement shall only apply in cases where eligibility for a benefit under United States laws exists by applying Article 7.1 of the Agreement.

6. Periods of coverage after the computation closing date provided in United States laws shall not be considered in determining the ratio referred to in Article 9.1 of the Agreement.

7. In cases where the theoretical primary insurance amount is determined by reference to the table of benefits contained in section 215(a) of the United States Social Security Act or deemed to be contained in such section, a pro rata primary insurance amount which is not equal to one contained in column IV of that table may be rounded to the nearest primary insurance amount appearing in such column or, if the pro rata primary insurance amount is less than the minimum primary insurance amount in such column, to a primary insurance amount as set forth in a column of amounts below the minimum primary insurance amount down to the amount of $1.00 in increments to be determined by the United States Competent Authority.

ARTICLE 6

1. Benefits awarded by the United States Competent Agency under the provisions of Part II of the Agreement shall be recomputed on its own motion to take into account additional periods of coverage completed under the laws of the United States of America. Benefits awarded by the United States Competent Agency under the provisions of Part II of the Agreement shall be recomputed upon application to take into account additional periods of coverage credited under German laws. Such a recomputation shall be made in the same manner as an automatic recomputation in accordance with the laws of the United States of America. The United States Competent Agency shall recompute benefits based on an earnings record if:

(a) the additional earnings increase the theoretical primary insurance amount on which the current benefit is based, and

(b) the total amount of the benefits payable by the United States Competent Agency based on the earnings record after the recomputation is more than the total payable without the recomputation.

Such recomputation shall not be processed or increase benefit amounts until after the close of the calendar year in which the additional periods of coverage are completed.

2. When an individual is already entitled to a benefit from the United States Competent Agency under Part II of the Agreement and subsequently meets the requirements for recipt of a higher benefit amount from the United States Competent Agency without recourse to Part II of the Agreement, the higher benefit amount shall become payable from the date that the requirements are met.

ARTICLE 7

1. An application for cash benefits under the laws of one Contracting State shall also be treated as an application for cash benefits under the laws of the other Contracting State if the application indicates that periods of coverage under the laws of the other Contracting State are also alleged. Article 14.2 of the Agreement shall remain unaffected.

2. In the application of Article 15 of the Agreement, additional requirements under national statutes for the protection of privacy and confidentiality of personal data shall remain unaffected.

ARTICLE 8

1. In the application of Article 14 of the Agreement, applications, appeals, statements, and documents necessary to establish eligibility shall be forwarded without delay by the Competent Agency of a Contracting State to which they have been presented to the liaison agency of the other Contracting State.

2. In the application of Article 9 of the Agreement the following shall apply:

(a) The German Competent Agency shall notify the United States Competent Agency upon its request of the amount of the person's covered earnings in any year during which periods of coverage were completed under German laws, together with a list of the months in the periods of coverage for which contributions were made. The amounts of earnings in a year to be reported by the German Competent Agency shall be derived from the contributions paid during periods of coverage in such year.

(b) For substitute periods (Ersatzzeiten) creditable under German laws, the United States Competent Agency shall take into account earnings which, upon request of the United States Competent Agency, have been certified by the German Competent Agency and which have been determined based on the average gross annual earnings for the year in question of all persons who are covered under the Wage Earners' Pension Insurance System and the Salaried Employees' Pension Insurance System.

(c) Excused periods (Ausfallzeiten) under German laws shall not be considered.

3. In accordance with procedures to be agreed upon pursuant to Article 2, the agencies referred to in Article 2 shall furnish each other available information or copies of documents relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

4. Each Agency shall be the final judge of the probative value of documentary evidence presented to it from whatever source. Article 12.2 of the Agreement shall not be affected by this provision.

5. The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number and total amount of benefits and commuted lump-sum payments, by type of benefit.

ARTICLE 9

The Agency of a Contracting State shall pay any cash benefits due to beneficiaries in the territory of the other Contracting State without recourse to a liaison agency of the other Contracting State.

ARTICLE 10

1. Where administrative assistance is requested under Article 10 of the Agreement, expenses, other than postage and regular personnel and operating costs of the Competent Authorities, agencies, and associations of the Agencies providing the assistance, shall be reimbursed.

2. Where the Agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Contracting State in which the claimant or beneficiary resides at the expense of the Agency which requests the examination.

3. The Agency of either Contracting State shall furnish to the liaison agency of the other Contracting State at its request and without expense any medical information and documentation relevant to the disability of the claimant or beneficiary which may come into its possession.

ARTICLE 11

For the purpose of Article 11.2 of the Agreement, the text of the decision or ruling must contain a certification by a body competent to issue such a certification testifying to its enforceability under the laws of the Contracting State in whose territory the certification was issued.

ARTICLE 12

For the purpose of Article 13.1 of the Agreement, laws governing the recourse to interpreters shall not be affected. Rulings, official notifications, or other documents may be transmitted directly to a person resident in the territory of the other Contracting State by registered letter.

ARTICLE 13

Where an Agency of one Contracting State is required to make payments to an Agency of the other Contracting State, such payments shall be made in the currency of the other Contracting State.

ARTICLE 14

The withholding of cash benefits in accordance with Article 18 of the Agreement shall be governed by the laws of the Contracting State whose agency is to withhold the cash benefits.

ARTICLE 15

The use of information furnished under the Agreement by one Contracting State to another with regard to an individual shall be governed by the respective national statutes for the protection or privacy and confidentiality of personal data.

ARTICLE 16

1. (a) Pursuant to the provisions of Article 2, paragraph 51a, subparagraphs 2 and 3 of the German Wage-Earners' Pension Insurance (Reform) Act (ArVNG) and of Article 2, paragraph 49a, subparagraphs 2 and 3 of the German Salaried Employees' Pension Insurance (Reform) Act (AnVNG), all of which entered into force on October 19, 1972, persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive voluntary contributions to the German pension insurance system for the period from January 1, 1956, through December 31, 1973. Such persons shall be deemed to be eligible for voluntary insurance under the German pension insurance system as if they were German nationals.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement. Such an application shall be filed with the German Competent Agency to which the person's last contribution was paid or, if the last contribution was paid to the Miners' Pension Insurance system, with the liaison agency of the Salaried Employees' Pension Insurance system.

(c) The contributions shall be paid directly to the Agency specified in paragraph (b) with which the application was filed.

(d) The contributions may be accepted by the agency concerned in installments over a period of up to three years. Such contributions may be made only up to the German contribution assessment ceiling for monthly earnings of the year 1973. The calculation of the German benefit computation base applicable to the insured persons shall be based on the figures for 1973.

(e) Events relevant to eligibility for a benefit under German laws which arise in the period between October 18, 1972, and the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(f) The application of the provisions of this section shall in all other respects be subject to the German transitional laws which entered into force on October 19, 1972.

2. (a) Pursuant to the provisions of Section 10 and Section 10a of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG), persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive contributions to the German pension insurance system.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement.

(c) In applying the provisions specified in paragraph (a) of this section, periods of coverage under United States laws shall be taken into account to the same extent as periods of coverage under German laws for the required period of coverage of 60 calendar months.

(d) Events relevant to eligibility for a benefit under German laws which arise before the end of the first twelve months after the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(e) If a person specified in paragraph (a) of this section has died before the date specified in the first sentence of Article 18 of this Administrative Agreement, Section 10 subsection 3 and Section 10a subsection 3 of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG) shall apply accordingly.

(f) Paragraph (d) of section (1) of this Article shall also apply to this section.

ARTICLE 17

This Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Administrative Agreement.

ARTICLE 18

This Administrative Agreement shall enter into force on the date on which both Governments will have informed each other that the steps necessary under their national statutes to enable the Administrative Agreement to take effect have been taken.[13] It shall be effective from the date of entry into force of the Agreement.

DONE at Washington on June 21, 1978, in duplicate in the English and German languages, both texts being equally authentic.

For the Government of the
United States of America: Joseph A. Califano, Jr.

For the Government of the
Federal Republic of Germany: B. Von Staden

---

[13] Oct. 30, 1979.

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND ITALY

* * * * * * *

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9058[1]

* * * * * * *

Agreement signed at Washington May 23, 1973
And administrative protocol
Signed at Rome November 22, 1977;
Entered into force November 1, 1978.
With procès verboux
Signed at Rome October 21, 1977 and October 4, 1978.
And exchange of notes
Signed at Rome January 16 and 20, 1978.
[*Supplementary Agreement signed April 17, 1984.***]**[2]

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC ON THE MATTER OF SOCIAL SECURITY

The President of the United States of America and
The President of the Italian Republic

Desirous of regulating the relations between the two States in the field of social security, in accordance with the principles established under Article VII of the Agreement signed at Washington, D.C., September 26, 1951, supplementing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic signed at Rome, February 2, 1948,[3] have agreed to conclude an Agreement for that purpose and have therefore appointed as their plenipotentiaries:

The President of the United States of America:

Caspar W. Weinberger, Secretary of Health, Education, and Welfare, and

The President of the Italian Republic:

Dionigi Coppo, Minister of Labor and Social Welfare,

who, having exchanged their full powers, found to be in good and due form, have agreed to the following provisions:

PART I

General Provisions

Article 1

For purposes of the application of this Agreement:

a. The term "territory" shall mean, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa; and as regards the Italian Republic, Italy;

b. The term "national" shall mean, as regards the United States of America, "national of the United States" as defined in Section 101, Immigration and Nationality Act of 1952, as amended;[4] and as regards the Italian Republic, an Italian national;

c. The term "laws", unless otherwise qualified, shall mean the laws, regulations, and any other measure concerning social security specified in Article 2 of this Agreement;

d. The term "competent authorities" shall mean the authorities responsible for the administration of the laws, and specifically: in the case of the United States of America: the Secretary of Health, Education, and Welfare (Ministro della Sanita, Educazione, e Previdenza Sociale); in the case of the Italian Republic: the Minister of Labor and Social Welfare (Ministro del Lavoro e della Previdenza Sociale);

e. The term "agency" shall mean for each Contracting State any agency, body or authority entrusted with the administration of an insurance system, under the laws specified in Article 2 of this Agreement;

f. The term "periods of coverage" shall mean the periods of payment of contributions or periods of earnings based on wages for employment or self-employment income, as defined or recognized as periods of coverage by the law under which such periods have been completed, or any similar periods insofar as they are recognized by such laws as equivalent to periods of coverage;

g. The term "workers" shall mean persons who have periods of coverage;

---

[1] This text is a copy of a Department of State publication as amended by Supplementary Agreement dated April 17, 1984. TIAS 9058 is the finding aid comparable to a citation to the United States Code.

[2] Material in brackets added.

[3] TIAS 1965, 4685; 63 Stat. 2255; 12 UST 131.

[4] 66 Stat. 166; 8 U.S.C. 1101.

h. The term "family members" shall mean the persons defined as eligible for benefits on the earnings record or periods of coverage of a living worker, whichever is applicable, as established under the laws of each of the Contracting States;

i. The term "survivors" shall mean the persons defined as eligible for benefits on the earnings record or periods of coverage of a deceased worker, whichever is applicable, as established under the laws of each of the Contracting States;

j. The terms "benefits" and "pensions" shall mean any cash benefits payable under the laws specified in Article 2 of this Agreement;

k. The term "basic benefit amount" ("importo della prestazione") shall mean, as regards the United States of America, "primary insurance amount" as set forth in the table of benefits contained in section 215(a) of title II or deemed to be contained in such section of the Social Security Act of 1935, as amended,[5] from which is derived by law the actual amount of the benefit which is payable; and as regards the Italian Republic, the amount of the benefit which is payable;

l. The term "beneficiary" shall mean any worker, family member or survivor who is entitled to benefits or pensions.

Article 2

1. For purposes of this Agreement the applicable laws relating to social security for disability, old-age, and survivorship are:

a. in the case of the Italian Republic, the legislation on compulsory general insurance for old-age, disability and survivors, as well as legislation providing benefits which are substitutes for benefits provided by said compulsory general insurance;

b. in the case of the United States, title II of the Social Security Act and regulations pertaining thereto, except section 226, 226A and 228 of that title and regulations pertaining to those sections.[6]

2. Notwithstanding the provisions of paragragh 1, as regards the Italian Republic, the present Agreement will be applied to legislation concerning other social security systems for similar cases which will be indicated by the competent authorities of the Italian Republic.

3. This Agreement shall also apply to future laws amending or supplementing the laws specified in this article.

Article 3

1. The present Agreement shall apply to workers who have periods of coverage under the laws, and to their family members or survivors.

2. The present Agreement shall not apply to periods of service as a diplomatic or career consular officer, or officer of a chancery, nor, except insofar as provided under Article 2.2, to periods of service covered under special systems for employees of the Government or of Government agencies or instrumentalities ("enti pubblici").

Article 4

The persons to whom the provisions of this Agreement apply shall have the same rights and obligations under the social security laws of each Contracting State under the same conditions as if such persons were covered solely under the social security laws of such State, whether they reside in the territory of a Contracting State or in a third State.

Article 5

For the purposes of eligibility for voluntary or optional insurance, in accordance with the provisions of the laws of a Contracting State, the periods of coverage completed under the laws of such State shall be combined, where necessary, with the periods of coverage completed under the laws of the other State.

---

[5] 64 Stat. 492; 42 U.S.C. 415

[6] Supplementary Agreement dated April 17, 1984 amended subsection b in its entirety.

Article 6

Except as otherwise provided in this Agreement, the persons eligible for benefits under the laws of one Contracting State, including benefits arising under this Agreement, shall receive them fully and without limitation or restriction while they reside in the territory of the other State. Such benefits shall be paid by each State to persons to whom the provisions of this Agreement apply who reside in a third State on the same terms and to the same extent that such benefits would be paid if such persons had been covered entirely under the social security laws of the paying State.

PART II

Provisions Relating to the Applicable Laws

Article 7

1. Persons to whom this Agreement applies who are employed or self-employed (che svolgono la loro attivita) within the territory of one of the Contracting States shall be subject to the laws of such State, except as otherwise provided in this Article.

2. Services performed by a United States national in Italy which are covered under the laws of the United States shall remain covered under the laws of the United States.

3. Services performed by an Italian national in the United States for an Italian employer or for an enterprise controlled by an Italian firm shall be covered under the laws of Italy.

4. With respect to any services which are subject to the laws of both States, the following rules will be applied:

a. a national of one of the States who, with respect to the same period of work, would be subject to the laws of both States shall remain subject for such period to the laws of the State of which he is a national and shall be exempt from the laws of the State of which he is not a national;

b. a national of Italy or a national of both States who, with respect to the same period of work, would be subject to the laws of both States shall, for such period, elect to remain subject to the laws of one of the States and shall be exempt from the laws of the other State;

c. a person who is not a national of either State and who, with respect to the same period of work, is subject to the laws of both States shall be subject, for such period, to the laws of the State in which the work is performed and shall be exempt from the laws of the other State.

5. The exemptions provided under this Article shall be effective when the agency of the State in which the periods of work are covered pursuant to paragraph 4 certifies to the agency of the other State that such periods of work are covered under its laws.

6. The competent authorities of the two States may agree in the interest of a worker or on behalf of categories of workers to other exceptions to the rule provided in paragraph 1.

PART III

Special Provisions
Disability, Old-Age, and Survivorship

Article 8

1. With respect to a period of work which results in a period of coverage under the laws of both Contracting States, the agency of each State shall for purposes of Article 8.2 and Article 8.4[7] take into consideration the period of coverage which results under the laws of that State.

2. If the laws of one State require completion of periods of coverage as a prerequisite for the acquisition, retention, or recovery of the right to benefits, the agency which applies such laws shall take into consideration, for such purpose, insofar as necessary, the periods of coverage completed under the laws of the other State, as if these were periods of coverage completed under the laws of the first State. Such agency shall take into consideration all the periods of coverage required to ensure the right to the fullest benefits provided for by the laws which it applies.

3. If the laws of a State establish as a condition for receiving certain benefits that the periods of coverage be completed in a given profession or occupation which is

---

[7] Supplementary Agreement dated April 17, 1984 struck out "9.2" and substituted "8.4".

subject to a special system of insurance, in determining eligibility for such benefits only the periods completed under a corresponding system of the other State or, failing that, in the same profession or occupation—even if a special system for said profession or occupation does not exist in the other State—shall be counted. If the total of such periods of coverage does not result in entitlement under the special system, such periods shall be used to determine eligibility for benefits of the general system of insurance or some other applicable system of insurance; provided, however, that the provisions of this paragraph shall apply only when they would result in payment of the highest possible benefit amount.

4. When entitlement to a benefit under the laws of one Contracting State is established in accordance with the provisions of paragraph 2, the agency of that State shall determine the theoretical basic benefit amount by considering all the periods of coverage completed under the laws of both States as if they had been completed exclusively under its own laws. That agency shall then establish the pro rata benefit amount on the basis of the theoretical basic benefit amount by applying the ratio of the total periods of coverage completed under the laws which it applies to the total of all the periods of coverage completed under the laws of the two States.[8]

5.[9] The agency of Italy shall not be obliged to apply the provisions of this Article in the case of a worker who has less than one year of coverage under the Italian law; the agency of the United States shall not be obliged to apply the provisions of this Article in the case of a worker who has less than 6 quarters of coverage under the United States law.

6. Where a worker's periods of coverage are less than the minimum period required by paragraph 5 under the laws of one State, those periods of coverage will nevertheless be considered by the agency of the other State as if they were periods of coverage under its own laws in order to both establish the right to benefits under pararaph 2 and the amount of the benefit under paragraph 4, provided that:

a. The worker has the minimum period required by paragraph 5 under the laws of the other State; and

b. The individual claiming benefits based on the periods of coverage of the worker is not eligible for a benefit based on those periods of coverage under the laws of the other State without recourse to totalization under paragraph 2.[10]

7. For the purpose of taking into consideration the periods of coverage as provided in Article 8.2 of the Agreement and for the purpose of computing benefits as provided in Article 8.4 of the Agreement, the following rules apply (subject to the conditions established in Article 8.5 of the Agreement):

a. The periods of coverage completed under the laws of one State shall be added to the periods of coverage completed under the laws of the other State, even if these periods have already given rise to the payment of a benefit from the first State;

b. When a period of coverage credited under the laws of one State coincides with a period of coverage credited under the laws of the other State, the agency of each State shall consider for purposes of determining the right to benefits and the benefit amount only those periods that were credited under its laws.[11]

Article 9

1. When a worker, family member or survivor satisfies the conditions imposed by the laws of a Contracting State for eligibility to benefits without the need to invoke the provisions of Article 8.2, the agency of that State shall pay benefits solely on the basis of the periods of coverage completed exclusively under its own laws.[12]

2. When a person entitled to a pro rata benefit from a Contracting State in accordance with Article 8.2 of the Agreement subsequently satisfies the requirements for entitlement to an equal or higher benefit from the same State in accordance with Article 9.1, payment of the pro rata benefit shall terminate, either automatically or upon request, in which case the benefit established on the basis of Article 9.1 shall be paid.[13]

Article 10

1. For purposes of the computation of the theoretical basic benefit amount, the agency of each Contracting State shall take account of a worker's earnings in the other State in the following manner:

---

[8] Supplementary Agreement dated April 17, 1984 added this section 4.

[9] Supplementary Agreement dated April 17, 1984 redesignated section 4 as 5.

[10] Supplementary Agreement dated April 17, 1984 added section 6.

[11] Supplementary Agreement dated April 17, 1984 added section 7.

[12] Supplementary Agreement dated April 17, 1984 amended section 1 in its entirety.

[13] Supplementary Agreement dated April 17, 1984 amended section 2 in its entirety and struck out sections 3, 4 and 5 of Article 9.

a. as regards the agency of the United States, the earnings in any year to be taken into consideration for periods of coverage completed under Italian laws shall be the equivalent of the earnings credited under the system of insurance in Italy for such year, subject to the maximum creditable earnings limitation under the laws of the United States for such year.

b. as regards the agency of the Italian Republic, for the periods of coverage completed under the laws of the United States there shall be credited the average salary or average contributions derived exclusively from the salary received or the credited contributions resulting from the periods of coverage completed under the laws of Italy.

2. If, under the laws of one State, the amount of benefits varies according to the number of family members or survivors, the agency of such State shall also take into account family members or survivors who are residing in the territory of the other State.

3. When entitlement to a benefit under the laws of the United States is established in accordance with the provisions of Article 8.2, the requirements of Article 8.4 and Article 10.1a shall be considered to be met if the agency of the United States: (a) computes the theoretical basic benefit amount in accordance with United States laws, based on the worker's periods of coverage and average earnings credited exclusively under United States laws, and (b) computes the pro rata benefit amount by applying to the theoretical basic benefit amount the ratio of the duration of the worker's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.[14]

Article 11

1. Upon application, benefits awarded under the provisions of Article 8.4[15] shall be recomputed by both States in accordance with the provisions of Article 8.4[16] to take into account additional periods of coverage completed under the laws of either Contracting State.

2. For the purpose of recomputing United States benefits awarded under the provisions of Article 8.4, the requirements of paragraph 1 shall be considered to be met if the agency of the United States recomputes the theoretical basic benefit amount and pro rata benefit amount in accordance with Article 10.3(a) and (b) to take into account additional periods of coverage completed under United States laws.[17]

Article 12

If the beneficiary becomes eligible under Article 8 for benefits paid by the agencies of both Contracting States and if the amount of such combined benefits is less then the benefit amount which would be payable, based on the minimum basic benefit amount, to such beneficiary by the agency of the State in which he resides, the agency of that State shall, at its own expense, pay the difference between the amount of such combined benefits and the amount of benefits which would be payable to such beneficiary based on such minimum basic benefit amount.

PART IV

Miscellaneous, Transitory, and Final Provisions

Article 13

The competent authorities and agencies of the two Contracting States shall assist each other in applying the present Agreement as if they were applying their respective laws; such reciprocal assistance shall be free of charge.

Article 14

1. The competent authorities of the two Contracting States shall by mutual agreement establish such administrative procedures as may be required to implement this Agreement and each competent authority shall designate one coordinating agency or organization to facilitate the application of this Agreement.

---

[14] Supplementary Agreement dated April 17, 1984 amended section 3 in its entirety.

[15] Supplementary Agreement dated April 17, 1984 struck out "9.2" and substituted "8.4".

[16] See footnote 15.

[17] Supplementary Agreement dated April 17, 1984 amended section 2 in its entirety and struck out section 3 of Article 11.

2. The competent authorities of the two States shall communicate to each other all information relating to regulations, administrative procedures, and amendments to their laws which may affect the application of this Agreement.

Article 15

The diplomatic and consular authorities of each Contracting State shall be empowered to address themselves directly to the competent authorities or agency of the other State in order to obtain useful information for safeguarding the interests of their own nationals, and may represent them without special mandate.

Article 16

1. Exemptions from duties, taxes, and fees provided for by the laws of either State shall also be valid for the application of the present Agreement, irrespective of the nationality of the beneficiaries.

2. The requirements imposed by the laws or regulations of either Contracting State relating to the certification ("legalizzazione") of all certificates or other documents shall be applied in respect to all certificates or other documents which must be presented for purposes of the application of this Agreement.

3. The certification as to the authenticity of a certificate or document, or a copy thereof, by the competent authorities or agency of one State shall be accepted as authentic by the competent authorities or agency of the other State.

Article 17

The competent authorities and the designated coordinating agencies or organizations of the two Contracting States may correspond directly with each other and with any persons wherever they may reside, whenever such correspondence is neccessary for the administration of this Agreement. Correspondence may be drafted in the writer's official language.

Article 18

The petitions which the beneficiaries address to the competent authorities or agency of either Contracting State for the application of the present Agreement may not be rejected merely because they are written in the official language of the other State.

Article 19

1. The applications and other documents presented in writing to the competent authorities or agency of either Contracting State shall have the same effect as if they were presented to the corresponding authorities or agency of the other State.

2. An application for benefits filed with the competent authorities or agency of one State is to be considered as an application for the payment of benefits by the agency of the other State, if the applicant explicitly requests that his application be so considered.

3. An appeal which must be filed within a given period of time with the competent authorities or agency of one of the States shall be considered to have been filed within such time limit if the appeal has been filed within such a period of time with the competent authorities or agency of the other State. In such case the authorities or agency with which an appeal is filed shall without delay transmit the said appeal to the competent authorities or agency of the other State, and acknowledge to the appellant that the appeal has been received.

Article 20

1. The competent authorities of the two Contracting States shall jointly establish procedures to resolve any problems or disagreements which may arise with regard to the application or interpretation of the present Agreement.

2. The competent authorities of the two States shall establish a permanent arbitration procedure for the consideration and resolution of any problems or disagreements which cannot be resolved under procedures established in accordance with paragraph 1. The arbitral body established under this paragraph shall settle questions referred to it in accordance with the principles of this Agreement. Decisions of the arbitral body shall be final and binding for purposes of the question referred to it, on the competent authorities and agencies of both States.

3. The arbitral body established under paragraph 2 shall consist of three members. The competent authorities of the two States shall each designate one member. The third member shall be designated by agreement of the two competent authorities.

Article 21

1. Pending the final determination of a beneficiary's rights under this Agreement, including settlement of any question under Article 20 between the competent authorities and agencies of the two Contracting States, the beneficiary whose rights are involved shall be awarded provisional benefits in accordance with this Article until such time as such determination has been made.

2. Each agency shall award the beneficiary, as provisional benefits, the benefits, if any, to which he would be entitled under its own laws or under this Agreement.

3. a. The agencies of both States shall establish procedures for adjusting their respective liabilities for benefits during the period in which provisional benefits were paid pending the final determination referred to in paragraph 1.

b. In giving effect to such procedures, the agency of either State shall withhold from payments it makes, based on the rights of a beneficiary as finally determined, amounts permitted by the laws of that State sufficient to reimburse the agency of the other State for amounts paid as provisional benefits in excess of the amounts finally awarded to such beneficiary.

Article 22

1. The agencies of the Contracting States, which have obligations relating to benefits to be paid in the other State under the present Agreement, shall validly discharge such obligations in the currency of their own State.

2. In case provisions designed to restrict the exchange of currencies are issued in either State, both Governments shall immediately adopt the necessary measures to insure, in conformity with the provisions of the present Agreement, the transfer of sums owed by either party.

Article 23

1. The provisions of this Agreement shall apply to any application for benefits (including a new application of an individual who has previously applied for benefits) which is filed on or after the date this Agreement enters into force.

2. In the application of the present Agreement, the periods of coverage completed prior to its entry into force shall be taken into consideration except that neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

3. If previous claims were satisfied through a lump sum payment because of insufficient periods of coverage and if, with the application of the provisions of this Agreement, the beneficiary meets the conditions required for receiving a pension, he may request a review of action taken on his case.

4. This Agreement shall not result in the payment of benefits for periods prior to the date of its entry into force.

Article 24

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. This Agreement shall enter into force on the first day of the month following the month in which the instruments of ratification are exchanged.[18]

3. a. This Agreement may be amended from time to time by supplementary agreements which shall take effect on the first day of the month following the month in which the instruments of ratification of such supplementary agreements are exchanged; provided, however, that nothing in this paragraph shall be construed to prevent such supplementary agreements from being given retroactive effect if they so specify.

b. Any supplementary agreement which takes effect under the terms of this paragraph shall be deemed thereafter for purposes of this Article to be an integral part of this Agreement.

c. A meeting for the consideration of a supplementary agreement shall be called at the request of the competent authorities of either State.

4. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its renunciation is delivered to the competent authorities of one Contracting State by the competent authorities of the other State.

5. If this Agreement is renounced, rights acquired shall be retained under the provisions of this Agreement and rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

---

[18] November 1, 1978.

DONE in Washington on this twenty-third day of May, 1973, in duplicate, in English and Italian, the two texts being equally authentic.

For the Government of the
United States of America: Caspar W. Weinberger

For the Government of the
Italian Republic: Ionigi Coppo

[Text in Italian omitted.]

ADMINISTRATIVE PROTOCOL FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY

between the

UNITED STATES OF AMERICA

and the

ITALIAN REPUBLIC

Signed at Washington, D.C. on May 23, 1973

PART I

GENERAL PROVISIONS

Article 1

DEFINITIONS

For the purposes of the application of the Agreement and this Protocol:

1. The term "Agreement" means the Agreement between the United States of America and the Italian Republic on the matter of Social Security signed at Washington, D.C., on May 23, 1973;

2. The term "claimant" means a worker, family member, or survivor who has filed an application for benefits under the laws of either State or of both States;

3. The term "provisional benefits" means any benefit to which a claimant may be entitled before a final determination as to the claimant's rights has been made;

4. The terms defined in Article 1 of the Agreement shall have the meaning given to them by the said Article.

Article 2

AGENCIES RESPONSIBLE FOR IMPLEMENTATION

1. The agencies responsible for applying this Protocol are:

(a) For the United States of America:

The Social Security Administration;

(b) For the Italian Republic:

—I.N.P.S. (Istituto Nazionale della Previdenza Sociale), General Directorate, Rome, for matters concerning disability, old-age and survivors insurance of employees, farmers, agricultural workers and sharecroppers, artisans, and businessmen;

—E.N.P.A.L.S. (Ente Nazionale di Previdenza e Assistenza per i Lavoratori dello Spettacolo), General Directorate, Rome, concerning disability, old-age and survivors insurance for workers in the entertainment business;

—I.N.P.D.A.I. (Istituto Nazionale di Previdenza per i Dirigenti di Aziende Industriali), General Directorate, Rome, concerning disability, old-age and survivors insurance for managerial personnel in industry;

—I.N.P.G.I. (Istituto Nazionale di Previdenza per i Giornalisti Italiani), General Directorate, Rome, concerning disability, old-age and survivors insurance for professional journalists.

2. The coordinating agencies designated under Article 14.1 of the Agreement to facilitate its application are:

(a) For the United States of America:
The Social Security Administration;
(b) For the Italian Republic:
The Istituto Nazionale della Previdenza Sociale General Directorate, Rome.

3. In carrying out their responsibilities under Article 14.1 of the Agreement, the Coordinating Agencies designated in paragraph 2 of this Article shall be responsible for the development of uniform policies and procedures and their uniform implementation by the Agencies in their respective States; for providing a channel of communication between the Agencies of one State and the Agencies of the other State; for determining which Agency is competent for the determination of a particular claim; and for facilitating the resolution of any issues that arise between the Agencies of the two States that cannot be resolved directly.

PART II

PROVISIONS RELATING TO APPLICABLE LAWS

Article 3

COVERAGE AND EXEMPTIONS

1. The Agency of the State under whose laws the services of a worker will remain covered in accordance with paragraphs 2, 3, or 4 of Article 7 of the Agreement shall issue to the worker, his employer, or the Agency of the other State, a certificate to that effect when requested to do so by the worker, his employer, or the Agency of the other State.

2. An exemption from the laws of one of the States, as provided for in Article 7.4 of the Agreement, shall apply to the period of work for which the certificate referred to in paragraph 1 of this Article was issued.

3. An election provided for in Article 7.4b of the Agreement or in this paragraph shall be exercised within 3 months following the month in which a period of work for any employer begins or the right to amend the election arises. The election shall be binding with respect to that period of work. In the case of an Italian national who is not a national of both States, any such election may be amended during the second year after the beginning of the period of work and the election as amended shall be applicable from the date it is made for future periods of work where Article 7.4b of the Agreement applies; except that such an Italian national shall be afforded the opportunity to further amend his election if he subsequently acquires or loses the status of permanent resident of the United States.

4. The obligation for payment of contributions and taxes in respect of old-age, survivors, and disability insurance of the United States of America shall be subject to the provisions of Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954, as amended.[1]

PART III

APPLICATION OF PARTICULAR PROVISIONS OF THE AGREEMENT REGARDING DISABILITY, OLD-AGE, AND SURVIVORS INSURANCE

Article 4

FILING AND PROCESSING CLAIMS

1. Claimants may avail themselves of their right to benefits under Articles 8 to 12 of the Agreement by filing an application with an Agency of either State, according to the rules of that Agency. Such application must specifically express intent to claim benefits from the Agency of the other State. An application with a Consulate of the United States of America located in the Italian Republic shall be deemed to be filed with the Agency of the United States of America; however, the Consulate of the United States of America with which the application was filed shall transmit, without delay, a copy thereof to the Italian Agency.

---

[1] 68A Stat. 353, 415; 26 U.S.C. 1401, 3121.

2. The date an application referred to in paragraph 1 is filed with the Agency of one State shall be recognized as the date of filing by the Agencies of both States; however, the claimant may request that an application be effective on a different date in the other State, within the limitations of and in conformity with the laws of the other State.

3. The Agency with which a claim was first filed shall transmit without delay to the Agency of the other State applications and other forms agreed upon by the Competent Authorities of the two States. Such forms shall contain all available information considered necessary to credit periods of coverage completed in both States, and such other information for determining a claimant's entitlement to benefits and the amount of benefits, including earnings amounts needed for its own calculations by the U.S. Coordinating Agency. Earnings amounts provided by the Italian Agency for years in which coverage is reported in terms of contributions and not in terms of earnings may be amounts derived by converting contributions made by workers into earnings amounts, using conversion tables agreed upon by the Competent Authorities of both States. In the case of an application for a disability benefit or, when necessary for a survivor's benefit, the relevant medical documentation which the Agency has in its possession shall be enclosed with the application form. The data on applications and forms shall be duly authenticated by the Agency that transmits the forms, and data on the authenticated forms shall be accepted as valid as the data on the original documents from which the data were extracted.

4. The Agency of a State which receives an application filed in the other State shall transmit without delay to the Agency of the other State the earnings information and other information referred to in the preceding paragraph.

5. The Agency of each State after determining the benefit amount due a claimant under the Agreement shall promptly advise the Agency of the other State of the benefit amount.

6. Each Agency shall be the final judge of the quality or probative value of documentary evidence presented to it from whatever source.

7. The limitations and restrictions mentioned in Article 6 of the Agreement refer only to limitations and restrictions on payment of benefits based solely on the physical presence or residence of the beneficiary.

[Article 5][2]

Article 6

RECOVERY OF OVERPAYMENTS

1. Whenever the Agency of one State has paid provisional benefits under paragraphs 1 and 2 of Article 21 of the Agreement to an individual in excess of the amount to which the individual is entitled under terms of the Agreement, the Agency may, within the conditions and limits prescribed by its laws, request the Agency of the other State to deduct the amount of the overpayment from the benefits which may later be payable by the other Agency to that individual, within the limits and conditions prescribed by the law under which it operates.

2. When Agencies of both States have overpaid benefits to the same individual, an Agency may give precedence to recovery of the overpayment under its laws.

3. The Competent Authorities of both States shall establish by common agreement procedures for processing amounts of overpaid provisional benefits recovered by each State on the account of the other during the calendar year.

Article 7

MEDICAL EXAMINATIONS FOR DISABILITY

1. In making a determination of the degree of disability of a claimant or of a beneficiary for a benefit based on a disability, the Agency of each State shall take into account any medical findings provided by the Agency of the other State. This shall be without prejudice to the right of the Agency of each State to have the claimant examined by a qualified physician.

2. The Agency of one State shall make available to the Agency of the other State, at its request, any medical information and documentation concerning the claimant which may be in its possession.

3. Where the Agency of either State requires that the claimant submit to a medical examination, such examination shall if requested be arranged by the Agency of the

---

[2] Supplementary Agreement dated April 17, 1984 struck out Article 5.

State in which the claimant resides at the expense of the Agency which requests the examination. Where such a medical examination has been secured for its own purposes by an Agency which receives such a request, it shall furnish a report of the examination without expense to the other Agency.

[Article 8][3]

PART IV

MISCELLANEOUS AND FINAL PROVISIONS

Article 9

EXCHANGE OF INFORMATION

1. The Competent Authorities of the two States shall develop operating procedures and forms for the implementation of the Agreement and shall establish by common agreement procedures for the expeditious processing of claims filed under the Agreement.

2. The Competent Authorities of the two States shall meet to establish procedures for the implementation of Article 12 of the Agreement.

3. At the specific request of the Agency of one State, the Agency of the other State shall furnish information or copies of documents available to it relating to any specified claimant.

Article 10

APPEALS

1. An appeal from a decision of the Agency of one State may be filed with the Agency of either State for the purpose of protecting the filing date.

2. The Agency with which an appeal is filed shall notify the Agency of the other State if it is determined to be an appeal from a decision of the other State. The State whose decision is being appealed shall follow its normal appellate process on an appeal, and shall notify the other State of its decision.

Article 11

CONFIDENTIALITY OF EXCHANGED INFORMATION

1. The use of information furnished by one State to another with regard to an individual shall be governed by this Article.

2. Any information transmitted by one State to the other State about an individual shall be treated as confidential by the other State and its officials receiving such information, including the officials mentioned in Article 15 of the Agreement, and shall be used exclusively for purposes of the implementation of the provisions contained in the Agreement and this Protocol or for the purpose of administering other benefit programs under the legislation of the other State.

3. The term "information" includes, but is not limited to, application forms, documentary evidence, medical evidence, certificates of election, any other papers furnished by an individual, notices to an individual, and all records, in whatever form, furnished by one State to the other which contain information concerning an individual, his earnings, the names of his employers, his present or past whereabouts, or his medical condition.

4. Use of information which does not pertain to or which does not identify a specific individual, such as in the case of statistical or research reports, shall be governed by the legislation or regulations of the respective States.

5. The right of an individual to inspection of records containing information pertaining to him shall be governed by the legislation or regulations of the State where the record is maintained.

---

[3] Supplementary Agreement dated April 17, 1984 struck out Article 8.

Article 12

ENTRY INTO FORCE

This Administrative Protocol shall enter into force on the date the Agreement enters into force[4] and shall be coterminous with that Agreement.

Done in Rome, November 22, 1977, in duplicate originals in the English and Italian languages each equally valid.

For the United States of America: Joseph A. Califano, Jr.

For the Italian Republic: Tina Anselmi

[Text in Italian omitted.]

---

[4] November 1, 1978.

AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND THE KINGDOM OF NORWAY

ON SOCIAL SECURITY

The Government of the United States of America and the Government of the Kingdom of Norway,

BEING DESIROUS of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

DEFINITIONS AND LAWS

Article 1

For the purpose of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Norway, the territory of the Kingdom of Norway;
2. "Norwegian Continental Shelf" means the sea bed and its subsoil of the submarine areas outside the coast of the Kingdom of Norway over which Norway has sovereign rights for the purpose of exploring it and exploiting its natural resources;
3. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Norway, a person of Norwegian nationality;
4. "Laws" means the laws and regulations specified in Article 2;
5. "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards Norway, the Ministry of Health and Social Affairs;
6. "Agency" means, as regards the United States, the Social Security Administration, and as regards Norway, the office or authority responsible for applying all or part of the laws designated in Article 2;
7. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. "Benefit" means any benefit provided for in the laws of either Contracting State;
9. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954;
10. "Refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   a. As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
      (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
      (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;
   b. As regards Norway:
      (i) the National Insurance Act of June 17, 1966, except chapters 2, 3, 4, 11 and 12, unless otherwise provided in the Final Protocol;
      (ii) the Act of June 19, 1969, on special supplements to benefits from the National Insurance Scheme;
      (iii) the Act of December 19, 1969, on compensation supplements to benefits from the National Insurance Scheme.
2. Unless otherwise provided in the Agreement, laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

PART II

GENERAL PROVISIONS

Article 3

This Agreement, unless it provides otherwise, shall apply to:

(a) nationals of either Contracting State,

(b) refugees,

(c) stateless persons,

(d) other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article, and who are or have been subject to the laws of a Contracting State.

Article 4

1. Unless otherwise provided in this Agreement, the persons designated in Article 3(a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment with the nationals of that Contracting State.

2. Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.

3. Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article 3 who reside in the territory of the other Contracting State.

PART III

PROVISIONS ON COVERAGE

Article 5

1. Unless otherwise provided in this Article, a person employed within the territory of one of the Contracting States shall with respect to that employment be subject to the laws on compulsory coverage of only that Contracting State.

2. If a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he were still employed in the territory of the first Contracting State, provided that his employment in the territory of the other Contracting State is not expected to last for more than 5 years. The preceding sentence shall apply regardless of whether the remuneration for such service is paid by the employer in the first Contracting State. The spouse and children who accompany a person sent by an employer located in the territory of one Contracting State to the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State for any period in which they are not employed in the other Contracting State.

3. (a) The provisions of paragraph 1 shall also apply in cases where a person is resident in Norway and employed on installations for the exploration and exploitation of natural resources on the Norwegian continental shelf.

(b) The provisions of paragraph 2 shall also apply in cases where a person is employed on installations for the exploration and exploitation of natural deposits on the Norwegian continental shelf as if he were employed in the territory of Norway.

4. A person who is self-employed in the territory of either Contracting State and who is resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State of which he is a resident.

5. (a) Part III of this Agreement shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

(b) Nationals of one of the Contracting States who are not mentioned in the provisions of the Vienna Conventions referred to in subparagraph (a) and who are employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

6. If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is subject to the laws on compulsory coverage of both Contracting States, the person shall be subject to the laws on compulsory coverage of only the Contracting State whose flag the vessel flies.

7. The Competent Authority of one Contracting State may grant an exception to the provisions of this Article if the Competent Authority of the other Contracting State agrees, provided that the affected person shall be subject to the laws of one of the Contracting States.

PART IV

PROVISIONS ON BENEFITS

Chapter I—Provisions Applicable to the United States

Article 6

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, pension point years completed under Norwegian laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit four quarters of coverage for each pension point year certified as creditable by the agency of Norway; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

4. For any calendar quarter credited with a quarter of coverage based on Norwegian periods of coverage according to paragraph 1, the agency of the United States shall take into account for purposes of computing a pro rata primary insurance amount the amount of any earnings credited to the person for that period under Norwegian laws, subject to the maximum annual creditable earnings limitation under United States laws.

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1.

6. Where entitlement to a benefit under United States laws is established according to the provisions of Article 6.1 of the Agreement, the requirements of Article 6.3 and 6.4 shall be considered to be met if the agency of the United States computes the pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Chapter II—Provisions Applicable to Norway

Article 7

1. (a) Where a person has completed at least one year of coverage under Norwegian laws, quarters of coverage completed under United States laws shall be taken into account to determine entitlement to disability, survivors and old-age pensions provided they do not coincide with periods of coverage already credited under Norwegian laws. To become entitled to a Norwegian supplementary pension based on the preceding sentence, pension points must have been credited for at least one year.

(b) Four quarters of coverage completed under United States laws shall correspond to one year of coverage under Norwegian laws.

2. (a) The basic disability or survivors pension of a person present in one of the Contracting States shall be computed on the basis of actual periods of coverage completed under Norwegian laws and on future periods of coverage based on the ratio of the actual periods of coverage to the full Norwegian insurance period of 40 years, provided that the resulting benefit amount is higher than a pension computed exclusively under Norwegian laws.

(b) The supplementary disability or survivors pension of a person present in one of the Contracting States shall be computed on the basis of actual pension point years credited under Norwegian laws and on future pension point years based on the ratio of the actual pension point years credited to the full Norwegian pension point earnings period of 40 years, provided that the resulting benefit amount is higher than a pension computed exclusively under Norwegian laws.

(c) Where a disability or survivors pension computed exclusively under Norwegian laws without recourse to this Agreement is higher than the total benefits payable by the agencies of both Contracting States in accordance with the provisions of this Agreement, the agency of Norway shall pay the benefit amount computed in accordance with the provisions of this Agreement increased by an amount which is equal to the difference between the amount payable by the agency of Norway without recourse to this Agreement and the total benefits payable by the agencies of both Contracting States in accordance with this Agreement.

3. An old-age pension shall be computed on the basis of periods of coverage fulfilled and pension point years credited under Norwegian laws.

4. A disability or survivors pension granted according to Norwegian laws shall be converted to an old-age pension when the person reaches the general pension age. The old-age pension shall be computed on the basis of periods of coverage and pension point years used to compute the disability or survivors pension.

5. Supplementary pensions payable to United States nationals shall be computed in accordance with the overcompensation provisions of Section 7-5 of the National Insurance Act in accordance with the regulations laid down pursuant to the third paragraph of that section. Pension increments due to overcompensation shall be paid to United States nationals also when they are resident in the territory of the United States.

6. A compensation supplement shall only be payable to persons resident in the territory of Norway. Payment of rehabilitation benefits, basic benefits, attendance benefits and child care benefits to persons not resident or present in the territory of Norway shall be determined in each case pursuant to Norwegian laws.

PART V

MISCELLANEOUS PROVISIONS

Article 8

The Competent Authorities of the two Contracting States shall:

(a) Conclude an administative agreement and make such other administrative arrangements as may be necessary for the implementation and application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 9

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

(a) for the United States, the Social Security Administration;

(b) for Norway, the National Insurance Institution.

Article 10

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

Article 11

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The Correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in the official language of the other Contracting State.

Article 12

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State or provides information indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. Notwithstanding paragraph 1, an applicant may specify that an application filed with an agency of one Contracting State not be considered an application under the laws of the other Contracting State or that the application be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. The provisions of Part IV of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article 13

1. A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of the other Contracting State.

2. Any claim, notice, or appeal which must be filed within a given period of time with the agency of one Contracting State shall be considered to have been timely filed if the claim, notice, or appeal has been filed within such period with the agency of the other Contracting State. In such case, the agency with which the claim, notice, or appeal has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

Article 14

In case provisions designed to restrict the exchange of currencies are issued in either Contracting State, the Governments of both Contracting States shall immediately confer on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 15

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities of the Contracting States, it shall at the request of either Contracting State be submitted for arbitration in accordance with procedures to be agreed upon by the Competent Authorities.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 16

1. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

2. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

3. Consideration shall be given to periods of coverage under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.

4. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

5. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

Article 17

The attached Final Protocol shall form an integral part of this Agreement.

Article 18

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 19

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

IN WITNESS whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Washington on 13 January 1983 in duplicate in the English and Norwegian languages, the two texts being equally authentic.

For the Government of the United States of America:	For the Government of the Kingdom of Norway:
Richard S. Schweiker	Knut Hedemann

FINAL PROTOCOL FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY

between the

UNITED STATES OF AMERICA

and the

KINGDOM OF NORWAY

At the time of signing the Agreement between the United States of America and the Kindgom of Norway on Social Security, the undersigned stated that they are in agreement on the following points:

1. The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article 5.1 of the Agreement shall apply when Article 5.2 is not applicable as a result of the preceding sentence.

2. Article 5.2 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

3. With respect to Article 5.2, a person who is sent by an employer having a place of business in the territory of Norway to the territory of the United States shall be subject to Norwegian laws, including those chapters of the National Insurance Act excepted from the scope of this Agreement in Article 2.1.b.(i).

4. With respect to Article 5.2, a person who is sent by an employer having a place of business in the territory of the United States to the territory of Norway and who is subject to United States laws shall also be subject to Norwegian laws with respect to those chapters of the National Insurance Act excepted from the scope of this Agreement in Article 2.1.b.(i).

5. Article 5.2 shall apply in cases where a national of a State other than a Contracting State is sent by an employer in the territory of one Contracting State to the territory of the other Contracting State, provided that its application does not conflict with any provision of another treaty or international agreement between a Contracting State and a third State.

6. A United States national not resident in Norway, employed on an installation for the exploration and exploitation of natural resources on the Norwegian continental shelf, to whom the provisions of Article 5.2 do not apply, and who is subject to United States laws with respect to that employment shall be exempt from Norwegian laws as defined in Article 2.1.b.(i) and remain subject to United States laws.

7. After the entry into force of this Agreement, the provisions of the second paragraph of Section 1-3 of the Norwegian National Insurance Act concerning exemptions from the National Insurance Scheme shall no longer be applied to persons to whom this Agreement is applicable.

8. With respect to Article 5.6, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

9. This Agreement does not affect the right of Norwegian nationals who are resident or present in the United States to apply for voluntary insurance under the National Insurance Scheme of Norway.

10. Provisions of Norwegian laws limiting retroactivity of the right to benefits shall not apply to rights arising under Article 7, provided that the claimant submits an application for benefits within one year after the date of entry into force of this Agreement.

11. Funeral grants under Norwegian laws shall be payable in respect of persons who were subject to Norwegian laws at the time of their death.

12. Nothing in this Agreement shall supersede the exchange of notes between the Norwegian Foreign Ministry and the Ambassador of the United States of America in Oslo on June 26, 1968, concerning old-age, survivors and disability benefits.

13. Article 4 of the Agreement shall be applied by the United States in a manner consistent with Section 233(c)(4) of the United States Social Security Act.

DONE AT Washington on 13 January 1983 in duplicate in the English and Norwegian languages, the two texts being equally authentic.

For the Government of the
United States of America:

Richard S. Schweiker

For the Government of the
Kingdom of Norway:

Knut Hedemann

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION

OF THE AGREEMENT ON SOCIAL SECURITY

between the

UNITED STATES OF AMERICA

and the

KINGDOM OF NORWAY

IN CONFORMITY with Article 8(a) of the Agreement between the United States of America and the Kingdom of Norway on Social Security of January 13, 1983, hereinafter referred to as "the Agreement," the following provisions have been agreed upon:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

The liaison agencies designated in Article 9.2 of the Agreement shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

CHAPTER 2

PROVISIONS ON COVERAGE

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Article 5 of the Agreement, the agency of that Contracting State shall issue upon request of the employer, employee or self-employed person a certificate stating that the concerned employee or self-employed person is covered by those laws. The certificate shall be proof that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

—In the United States:
By the Social Security Administration
—In Norway:
By the local National Insurance Office where the person resides in the cases mentioned in Article 5.1 and 5.4, and by the National Insurance Office for Social Insurance Abroad in the cases mentioned in Article 5.2, 5.3, 5.5 and 5.6.

CHAPTER 3

PROVISIONS ON BENEFITS

Article 4

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 12 of the Agreement shall inform the agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the agencies.

Article 5

In the application of Article 6 of the Agreement, the Norwegian liaison agency shall notify the United States liaison agency of the years in which a person is credited with pension points under Norwegian laws and, if necessary, the person's creditable earnings in any such year.

Article 6

In the application of Article 7 of the Agreement, the United States liaison agency shall notify the Norwegian liaison agency of the periods of coverage completed under United States laws.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Article 7

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

Article 8

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 9

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 10

1. Where administrative assistance is requested under Article 9 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed in accordance with procedures to be agreed upon by the liaison agencies.
2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination. The expenses incurred shall be reimbursed in accordance with procedures to be agreed upon by the liaison agencies.
3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

Article 11

The agency of a Contracting State shall pay any cash benefits due to beneficiaries under the Agreement without recourse to the liaison agency of the other Contracting State.

Article 12

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 13

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Washington on 13 January 1983 in duplicate in the English and Norwegian languages, both texts being equally authentic.

For the Government of the United States of America:	For the Government of the Kingdom of Norway:
Richard S. Schweiker	Knut Hedemann

Agreement between the United States of America

and the Kingdom of Sweden

on Social Security

The Government of the United States of America

and

The Government of the Kingdom of Sweden

BEING DESIROUS of regulating the relationship between their two countries in the field of Social Security, have agreed to the following provisions:

PART I

General Provisions

Article 1

For the purpose of this Agreement:

1. "Territory" means,
as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and
as regards Sweden, the territory of the Kingdom of Sweden;
2. "National" means,
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and
as regards Sweden, a person of Swedish nationality;
3. "Laws" means
the laws and regulations concerning the systems of social security specified in Article 2;
4. "Competent Authority" means,
as regards the United States, the Secretary of Health and Human Services, and
as regards Sweden, the Government or the Authority nominated by the Government;
5. "Agency" means,
as regards the United States, the Social Security Administration, and
as regards Sweden, any agency or authority responsible for implementing the laws specified in Article 2, paragraph 1(b);
6. "Period of coverage" means
a period of contributions, a period of earnings from employment or self-employment, or any similar period recognized as a period of coverage, according to the laws under which it was completed; and
7. "Benefit" or "Pension" means
any old-age, dependent, survivor or disability pension or benefit provided for in the laws of either Contracting State.

Article 2

1. For the purpose of this Agreement, the applicable laws concerning benefits and contributions are:

a. As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

b. As regards Sweden, the laws governing

(i) basic pension,

(ii) supplementary pension;

provided, however, that this Agreement shall not affect coverage or the liability to pay contributions under branches of social security other than those referred to in this subparagraph.

2. Unless otherwise provided in this Agreement, laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

Article 3

Unless otherwise provided in this Agreement, this Agreement shall apply to:

(a) nationals of the Contracting States,

(b) refugees and stateless persons within the meaning of the Convention Relating to the Status of Refugees, dated July 28, 1951, and the Protocol to that Convention, dated January 31, 1967, and the Convention Relating to the Status of Stateless Persons, dated September 28, 1954,

(c) other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or from a stateless person, and

(d) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (c) of this Article.

Article 4

Unless otherwise provided in this Agreement, the persons designated in Article 3(a), (b), or (c) who reside in the territory of a Contracting State shall, in the application of the laws of that Contracting State, receive equal treatment with the nationals of that Contracting State.

Article 5

Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article 3(a), (b) or (c) who reside in the territory of the other Contracting State.

Article 6

Unless otherwise provided in this Agreement, benefits payable under the laws of one of the Contracting States shall be paid to nationals of the other Contracting State, who are resident in the territory of a third State, on the same terms and to the same extent as to the nationals of the first Contracting State resident in the territory of this third State.

PART II

Applicable Laws on Coverage

Article 7

1. Unless otherwise provided in this Agreement, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. If a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 60 months, he shall be subject to the laws of only the first Contracting State as if he were still employed in the territory of the first Contracting State. A person who is sent by an employer located in the territory of one Contracting State to the territory of the other Contracting State, and who is subject to the laws of the first State according to the provisions of the preceding sentence, shall be considered resident in the first State for purposes of Swedish laws on pensions. The spouse and children who accompany the persons shall also be considered resident in the first State for purposes of Swedish laws on pensions for any period in which they are not engaged in employment subject to the laws of the other State.

Article 8

A person who would otherwise be covered under the laws of both Contracting States with respect to self-employment performed in either Contracting State and who is a resident of one Contracting State shall be subject to the laws of only the Contracting State of which he is a resident.

Article 9

1. If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is covered under the laws of both Contracting States, the persons shall be subject to the laws of only the Contracting State whose flag the vessel flies. For purposes of the preceding sentence, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

2. A person who would otherwise be covered under the laws of both Contracting States with respect to employment as an officer or member of a crew on an aircraft shall, with respect to that employment, be subject only to the laws of Sweden if he resides in the territory of Sweden, and only to United States laws if he resides in the territory of the United States.

Article 10

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by that State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Vienna Conventions mentioned in paragraph 1 shall be subject to the laws of only the first Contracting State. Employment by the United States shall mean employment by the United States Government or an instrumentality thereof.

Article 11

1. The Competent Authorities of the two Contracting States may agree on exceptions to Articles 7, 8, 9, and 10, with respect to persons or categories of persons, provided that the affected persons shall be subject to the laws of one of the Contracting States.

2. Where a person covered under the laws of a Contracting State in accordance with this Agreement is also covered under the laws of the other Contracting State or a third State in accordance with the provisions of an agreement between either Contracting State and a third State, the Competent Authorities of the two Contracting States may agree to exclude the person from the application of Part II of this Agreement.

PART III

Provisions on Benefits

Chapter I

Provisions Applicable to the United States

Article 12

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under Swedish laws on supplementary pension insurance and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligiblity for benefits under paragraph 1 of this Article, the agency of the United States shall credit four quarters of coverage for each pension point year certified by the agency of Sweden; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1.

5. Articles 4, 5 and 6 of the Agreement shall be applied by the United States in a manner consistent with section 233(c)(4) of the United States Social Security Act.

Chapter II

Provisions Applicable to Sweden

Article 13

1. Nationals of the United States as well as the persons designated in Article 3(b) and (c) who do not fulfill the conditions of the Swedish laws which apply to them as regards entitlement to a basic pension shall, whether they reside in Sweden or not, be entitled to a basic pension in accordance with the provisions applicable to Swedish nationals resident outside of Sweden.

2. Disability benefits which are not supplements to a basic pension, care allowances for handicapped children, pension supplements and income-tested pension benefits shall be granted to persons designated in paragraph 1 who are residing in Sweden, appropriately applying the rules contained in that paragraph.

3. Where a person designated in Article 3(a), (b) or (c) does not have sufficient Swedish periods of coverage to satisfy the requirements for entitlement to a basic pension in accordance with the provisions applicable to Swedish nationals resident outside of Sweden, periods of coverage completed under United States laws shall be taken into account insofar as they do not coincide with Swedish periods of coverage.

4. Where periods of coverage have been completed under both the Swedish laws on supplementary pension insurance and United States laws, those periods shall, when necessary, be added together for the acquisition of a right to supplementary pension, insofar as they do not coincide.

5. When computing the amount of a supplementary pension, only periods of coverage creditable under Swedish laws shall be taken into account.

6. When applying paragraphs 3 and 4 of this Article, four quaters of coverage under United States laws shall be considered equal to one calendar year for which pension points have been credited under Swedish laws.

7. Article 4 of this Agreement shall not result in an extension in the application of the transitional provisions of Swedish laws concerning:

a) the right to a basic pension for Swedish nationals born before 1930 residing outside Sweden, and

b) the calculation of a supplementary pension for Swedish nationals born before 1924.

8. Article 5 of this Agreement does not affect the provisions of Swedish laws concerning the right of Swedish nationals residing outside of Sweden to a basic pension.

PART IV

Miscellaneous Provisions

Article 14

1. The Competent Authorities shall make all necessary administrative arrangements for the application of this Agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

a) for the United States, the Social Security Administration;

b) for Sweden, the National Social Insurance Board.

Article 15

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative arrangement.

2. Correspondence between the Competent Authorities and agencies, communications from individual persons, and applications or documents may be in English or Swedish.

Article 16

The Competent Authorities shall inform each other as soon as possible of any amendments to the laws specified in Article 2 which may affect the application of this Agreement.

Article 17

The Competent Authorities shall keep each other informed of the measures taken for the application of this Agreement.

Article 18

Any exemption granted by one of the Contracting States from fees or charges, including stamp duties or notarial or registration fees, in respect of certificates and documents requried to be submitted to its Competent Authority or an agency shall also apply to certificates and documents which for the purposes of this Agreement must be submitted to the Competent Authority or an agency of the other Contracting State. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

Article 19

An application, appeal, or other document which according to the laws of a Contracting State must be submitted to an agency of that Contracting State within a specified period shall be considered to have been timely filed if it is submitted within the same period to an agency of the other Contracting State. In such case, the agency with which the application, appeal, or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

Article 20

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant (a) requests that it be considered an application under the laws of the other Contracting State or (b) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. An applicant may request that an application filed with an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

Article 21

1. Payments under the Agreement may be made in the currency of the Contracting State making the payment.

2. Should currency restrictions be introduced by either of the Contracting States, the two Governments shall immediately decide on the necessary steps to insure the transfer of amounts owed by either Contracting State in conformity with the provisions of this Agreement.

Article 22

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the Competent Authorities of the Contracting States.

2. If any such disagreement has not been resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

Article 23

1. This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

2. The Competent Authority of either Contracting State may call a meeting for the consideration of a supplementary agreement.

PART V

Transitional and Final Provisions

Article 24

1. This Agreement shall apply to events which occurred prior to its entry into force insofar as they are relevant to rights under the laws specified in Article 2. However, no benefits shall be payable under this Agreement with respect to any period prior to its entry into force, and no lump sum death benefit shall be payable if the person died before its entry into force. Periods of coverage completed before the entry into force of this Agreement shall be taken into account in order to determine the right to benefits under this Agreement.

2. The provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force. Where no final decision has been made on an application filed before the date this Agreement enters into force, the application shall be considered to have been filed on that date.

3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

4. Provisions of Swedish laws limiting retroactivity of the right to benefits shall not apply to rights arising as a result of the entry into force of this Agreement, provided that the claimant submits an application for benefits within one year after the date of entry into force of this Agreement.

5. The period of work referred to in Article 7.2 shall be measured beginning on or after the date on which this Agreement enters into force.

Article 25

1. This Agreement may be denounced by either of the Contracting States. If the Agreement is denounced it shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, its provisions shall continue to apply to benefits which have already been awarded. Rights in the process of being acquired by virtue of this Agreement shall be settled by special arrangement between the Contracting States.

Article 26

This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of the Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Stockholm on May 27, 1985 in duplicate in the English and Swedish languages, both texts being equally authentic.

For the Government of the United states of America:	For the Government of the Kingdom of Sweden:
Margaret M. Heckler Franklin S. Forsberg	Sten Andersson

Administrative Arrangement for the Implementation of the Agreement between the United States of America and the Kingdom of Sweden on Social Security

The Government of the United States of America and the Government of Sweden,
In conformity with Article 14, paragraph 1, of the Agreement between the United States of America and the Kingdom of Sweden on Social Security of this date, hereinafter referred to as the "Agreement," have agreed as follows:

Chapter 1

General Provisions

Article 1

Terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

The liaison agencies designated in Article 14, paragraph 2, of the Agreement shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Chapter 2

Provisions on Coverage

Article 3

1. In cases referred to in Article 7, paragraph 2, of the Agreement, the application of the laws of a Contracting State shall be proved by a certificate. In other appropriate cases referred to in Part II of the Agreement, such a certificate may also be issued.

2. The certificate referred to in paragraph 1 shall be issued upon request
— In the United States
By the Social Security Administration
— In Sweden
By the National Social Insurance Board or, after authorization, its delegate.

Chapter 3

Provisions on Benefits

Article 4

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 20 of the Agreement shall inform the agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part III of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the agency of the other Contracting State with such evidence and other available information as it may require to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

In the application of Article 12 of the Agreement, the Swedish agency shall notify the United States agency of the years in which a person is credited with pension points under Swedish laws.

Article 6

In the application of Article 13 of the Agreement, the United States agency shall when necessary notify the Swedish agency of the periods of coverage which a person has completed under the laws of the United States.

Chapter 4

Miscellaneous Provisions

Article 7

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2, paragraph 1, of the Agreement.

Article 8

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. When applying its laws, the agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 9

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiares and the total amount of benefits, by type of benefit.

Article 10

1. Where administrative assistance is requested under Article 15 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.

2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or beneficiary is present, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

3. Upon request, the agency of either Contracting State shall furnish without expense to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 11

Where the Agreement or this Administrative Arrangement provides for communication between agencies of the Contracting States, the agencies may communicate either directly or through the liaison agencies.

Article 12

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 13

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done at Stockholm on May 27, 1985 in duplicate in the English and Swedish languages, both texts being equally authentic.

For the Government of the
United States of America:

Margaret M. Heckler
Franklin S. Forsberg

For the Government of the
Kingdom of Sweden:

Sten Andersson

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND SWITZERLAND[1]

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9830

* * * * * * *

Agreement signed at Washington July 18, 1979;
Entered into force November 1, 1980.
With final protocol.
And administrative agreement
Signed at Bern December 20 1979;
Entered into force November 1, 1980.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

The President of the United States of America and the Swiss Federal Council,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed to conclude an Agreement for that purpose and have therefore appointed as their plenipotentiaries:

For the President of the United States of America: Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare.

For the Swiss Federal Council: Raymond Probst, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation to the United States of America who, having exchanged their full powers, found to be in good and due form, have agreed to the following provisions:

PART I

Definitions and Laws

ARTICLE 1

For the purposes of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Switzerland, the territory of the Swiss Confederation;
2. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Switzerland, a person of Swiss nationality;
3. "Laws" means the laws and regulations specified in Article 2;
4. "Competent Authority" means, as regards the United States, the Secretary of Health, Education, and Welfare, and as regards Switzerland, the Federal Social Insurance Office;
5. "Agency" means, as regards the United States, the Social Security Administration, and as regards Switzerland, a compensation fund of the Old-Age and Survivors Insurance and the other bodies responsible for the administration of Disability Insurance;
6. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
7. "Benefits" ("Prestations") means any benefit in cash or in kind as provided for in the laws of either Contracting State;
8. "Family member" means a person eligible for benefits based on the periods of coverage of a living person as established under the laws of each of the Contracting States;
9. "Survivor" means a person eligible for benefits based on the periods of coverage of a deceased person as established under the laws of each of the Contracting States;
10. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954; and

---

[1] This text is a copy of a Department of State publication. TIAS 9830 is the finding aid comparable to a citation to the United States Code. Regulations of the Secretary of Health and Human Services relating to totalization agreements are contained in Part 404, Subpart T, Chapter III, title 20, Code of Federal Regulations.

11. "Refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

ARTICLE 2

1. For the purpose of this Agreement, the applicable laws are:
a. As regards Switzerland, the Federal laws governing—
—Old-Age and Survivors Insurance,
—Disability Insurance;
b. As regards the United States, the laws governing the Federal Old-Age, Survivors, and Disability Insurance Program:
—Title II of the Social Security Act and regulations promulgated under the authority provided in the Social Security Act, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
—Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.
2. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.

PART II

General Provisions

ARTICLE 3

Unless otherwise provided, this Agreement shall apply to:
(*a*) nationals of either Contracting State,
(*b*) refugees who reside in either Contracting State,
(*c*) stateless persons who reside in either Contracting State,
(*d*) other persons, including family members and survivors, with respect to the rights they derive from persons in categories (a), (b) and (c).

ARTICLE 4

Unless otherwise provided in this Agreement or the Final Protocol, nationals of one Contracting State shall, in the application of the laws of the other Contracting State, receive equal treatment with the nationals of the other Contracting State.

ARTICLE 5

The Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning benefits that are more favorable to the persons listed in Article 3.

PART III

Provisions on Coverage

ARTICLE 6

1. Unless otherwise provided in Part III of this Agreement or the Final Protocol, a national of either Contracting State who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed, and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.
2. Where a person in the service of an employer having a place of business in the territory of a Contracting State is sent by that employer to the territory of the other Contracting State for a limited period, the person shall be subject to the laws on compulsory coverage of only the first Contracting State, provided that his employment in the territory of the other Contracting State is not expected to last for more than five years or such longer period as may be agreed upon by the Competent Authorities in a particular case.

3. A national of either Contracting State who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory he resides.

ARTICLE 7

1. Part III of this Agreement shall not apply to the categories of persons listed in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States not listed in the provisions of the Vienna Conventions mentioned in paragraph 1, employed by that Contracting State in the territory of the other Contracting State, shall be subject to the laws on compulsory coverage of only the first Contracting State.

ARTICLE 8

The Competent Authority of one Contracting State may grant an exception to the provisions of Part III of this Agreement if the Competent Authority of the other Contracting State agrees, provided that the affected employed or self-employed person will be subject to the laws on compulsory coverage of one of the Contracting States.

PART IV

Provisions on Benefits

CHAPTER 1

Application of Swiss Laws

ARTICLE 9

A contribution period of at least one year shall be required for entitlement to Swiss ordinary Old-Age, Survivors and Disability Insurance Pensions intended for United States nationals.

ARTICLE 10

1. United States nationals may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have, immediately prior to eligibility for such measures, paid contributions under Swiss laws for at least one year.

2. Spouses and widows of United States nationality not gainfully employed, as well as children under age of the same nationality, may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have resided in Switzerland without interruption for at least one year immediately prior to eligibility for such measures. Children under age of the same nationality may, moreover, claim such measures if they are domiciled in Switzerland and have been born invalids in Switzerland or have resided in Switzerland without interruption since birth.

ARTICLE 11

1. Where the right to an ordinary pension under Swiss laws depends on a current affiliation with Swiss Old-Age, Survivors and Disability Insurance, a United States national shall satisfy such requirement if, on the date the insured event occurs according to Swiss laws, the United States national has a record of current coverage under United States laws.

2. Ordinary pensions for insured persons with a disability inferior to 50 percent shall be paid to United States nationals only as long as they maintain their domicile in Switzerland.

ARTICLE 12

United States nationals shall only be entitled to extraordinary pensions under Swiss laws if they (1) maintain their domicile in Switzerland and (2) show proof that immediately prior to the month in which they apply for pensions they have resided in Switzerland without interruption for

(*a*) at least ten full years if applying for an old-age pension, or

(*b*) at least five full years if applying for a disability or survivors pension, or for an old-age pension which would replace a disability or survivors pension.

CHAPTER 2

Application of United States Laws

ARTICLE 13

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under Swiss laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified as creditable by the agency of Switzerland to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

4. For any calendar quarter not already a quarter of coverage under United States laws, the agency of the United States shall take into account for purposes of computing a pro rata primary insurance amount the amount of any earnings credited to the person in that period under Swiss laws, subject to the maximum annual creditable earnings limitation under United States laws.

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to a higher benefit without the need to invoke the provision of paragraph 1.

PART V

Miscellaneous Provisions

ARTICLE 14

The Competent Authorities of the two Contracting States shall:

(*a*) Make all necessary administrative arrangements for the application of this Agreement;

(*b*) Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;

(*c*) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(*d*) Communicate to each other, as soon as possible, information concerning all changes in their respective laws.

ARTICLE 15

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

(*a*) for the United States, the Social Security Administration; and (*b*) for Switzerland, the Swiss Compensation Office.

ARTICLE 16

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

ARTICLE 17

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in an official language of the other Contracting State.

3. The notices of decisions of an agency or a tribunal which under the laws of a Contracting State require personal delivery may be transmitted directly by registered letter to a person in the territory of the other Contracting State.

ARTICLE 18

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant (*a*) requests that it be considered an application under the laws of the other Contracting State or (*b*) in the absence of a request that it not be so considered, provides information indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. An applicant may request that an application submitted to an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

ARTICLE 19

1. A written appeal of a determination made by an agency of one Contracting State may be validly filed with an agency of the other Contracting State.

2. Any claim, notice or appeal which must be filed within a given period of time with an agency of one Contracting State shall be considered to have been timely filed if the claim, notice or appeal has been filed within such period with a corresponding agency of the other Contracting State. In such case, the agency with which the claim, notice or appeal has been filed shall indicate the date of receipt of the document on this document and transmit it without delay to the liaison agency of the other Contracting State.

ARTICLE 20

1. The amount of any benefit due in accordance with the provisions of this Agreement shall be paid in the currency of the Contracting State whose agency is responsible for such benefit.

2. In case provisions designed to restrict the exchange of currencies are issued in either Contracting State, the Governments of the two Contracting States shall decide on the measures necessary to assure the transfer of sums owed by either Contracting State under this Agreement.

ARTICLE 21

Any disagreement between the Contracting States concerning the interpretation or implementation of this Agreement which has not been settled within six months shall, at the request of either Contracting State, be submitted to an arbitral tribunal of three members. Each Contracting State shall appoint one member. These two members shall select the presiding member. Should the members disagree on the nomination of the presiding member, the presiding member will be appointed by the President of the International Court of Justice. The arbitral tribunal shall establish its own procedure. The decision of the arbitral tribunal shall be binding on the Contracting States.

PART VI

Transitional and Final Provisions

ARTICLE 22

1. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

2. This Agreement shall not establish any claim to payment of a benefit for any periods before its entry into force or a lump-sum death benefit if the person died before its entry into force.

3. Consideration shall be given to any period of coverage and any period of residence under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.

4. This Agreement shall not apply to rights settled by a lump-sum payment or refund of contributions.

5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

6. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

ARTICLE 23

The attached Final Protocol shall form an integral part of this Agreement.

ARTICLE 24

The Agreement embodied in the exchange of notes between the Swiss Federal Political Department and the Ambassador of the United States of America in Bern of June 27, 1968, concerning the reciprocal payment of certain old-age, survivors and disability benefits is terminated effective with the date of entry into force of the present Agreement.

ARTICLE 25

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

ARTICLE 26

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

IN WITNESS WHEREOF, the plenipotentiaries of the Contracting States being duly authorized thereto, have signed the present Agreement.

DONE at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE SWISS FEDERAL COUNCIL:
JOSEPH A. CALIFANO, JR.	RAYMOND PROBST

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

At the time of signing the Agreement between the United States of America and the Swiss Confederation on Social Security, the undersigned plenipotentiaries stated that they are in agreement on the following points:

1. With respect to Article 4, persons designated in Article 3(b) (c) or (d) who reside in the territory of Switzerland shall receive benefits provided by the laws of the United States under the same conditions as United States nationals who reside in Switzerland.

2. Article 4 shall not apply to provisions of Swiss laws on (a) voluntary Old-Age, Survivors and Disability Insurance of Swiss nationals residing abroad; (b) Old-Age, Survivors and Disability Insurance of Swiss nationals working abroad on account of an employer in Switzerland; (c) welfare benefits ("allocations de secours") granted to Swiss nationals residing abroad; or (d) helplessness allowances ("allocations pour impotents").

3. Article 4 and Article 6 of the Agreement shall not apply where they would result in coverage under the laws of the United States and there is no provision under such laws for contributions with respect to such coverage.

4. Unless otherwise provided in the Agreement or this Final Protocol, Article 6.2 shall apply to a person sent by an employer located in the territory of Switzerland to the territory of the United States, regardless of nationality of the person; provided, however, that this paragraph shall not supersede any provisions of another treaty or international agreement between a Contracting State and a third State.

5. Article 6.2 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

6. With respect to Article 10.2, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding two months within a period of one year.

7. With respect to Article 11.1, a United States national shall be considered to have a record of current coverage under United States laws if he is entitled to a benefit under such laws or has credit for at least four quarters of coverage under such laws during a period of eight calendar quarters ending with the calendar quarter (a) in which the insured event occurs according to Swiss laws or (b) immediately preceding the calendar quarter in which the insured event occurs according to Swiss laws.

8. Article 11.1 notwithstanding, United States nationals with a disability inferior to 66 2/3 percent may claim an ordinary pension of the Swiss Disability Insurance only as long as they are currently affiliated with Swiss Old-Age, Survivors and Disability Insurance a the date the insured event occurs.

9. United States nationals not domiciled in Switzerland who have to give up their gainful activity in Switzerland because of an injury or disease and who stay in Switzerland until the insured event occurs, are considered as being currently affiliated with Swiss laws and may claim benefits of the Disability Insurance. They shall have to pay contributions to Old-Age, Survivors and Disability Insurance as if they were domiciled in Switzerland.

10. With respect to Article 12, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding three months within a calendar year. However, a period of residence in Switzerland during which a United States national has been exempt from coverage under Swiss laws shall not be considered in determining if the period of residence required under Article 12 has been completed.

11. The refund of contributions paid under Swiss laws, carried out in accordance with Swiss laws on the refund of contributions to foreigners and stateless persons, shall not bar the payment of extraordinary pensions in accordance with Article 12; provided, however, that contributions refunded shall be charged against benefits to be paid.

12. With respect to Article 13, in accordance with section 233(c)(3) of the United States Social Security Act, the Agreement shall not apply to entitlement to hospital insurance benefits provided under sections 226 and 226A of that Act.

13. Article 13 shall also apply to nationals of a State other than a Contracting State who are not included among the persons referred to in Article 3(d).

14. With respect to Switzerland, appeals which must be filed within a given period of time with a tribunal in Switzerland shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with the agency or a court in the United States.

Done at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE SWISS FEDERAL COUNCIL:
Joseph A. Califano, Jr.	Raymond Probst

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY OF JULY 18, 1979

In conformity with Article 14(a) of the agreement on Social Security concluded on July 18, 1979 between the United States of America, and Switzerland, herein after referred to as "the Agreement", the following provisions have been agreed upon:

Chapter 1

General Provisions

Article 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

The Swiss Competent Authority or, with its consent, the Swiss liaison agency, and the United States liaison agency shall agree upon joint administrative measures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

Chapter 2

Provisions Concerning the Applicable Laws

Article 3

1. In cases where Article 6.2 of the Agreement applies, the agency of the Contracting State whose laws are applicable shall issue upon request of the employer a certificate stating that the concerned employee remains subject to these laws. The certificate shall be proof that the employee is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued:

In the United States: By the Social Security Administration.

In Switzerland: By the competent compensation fund of the Old-Age and Survivors Insurance.

3. If the duration of a transfer must be prolonged beyond the period of 5 years referred to in Article 6.2 of the Agreement, and both the employer and employee wish the applicable laws on compulsory coverage to continue to apply in accordance with Article 6.2 once that period expires, they must request an extension before the expiration of the 5-year period. If it is expected before the transfer that its duration will exceed 5 years, the request to extend the 5-year period must be made before the transfer takes place. Such requests shall be submitted to the Competent Authority or, with its consent, to the liaison agency of the Contracting State from whose territory the employee is sent. These authorities shall express their agreement through an exchange of letters and shall communicate their decisions to the concerned agency of their country.

Chapter 3

Provisions Concerning Benefits

Article 4

1. In cases where Article 18 of the Agreement applies the liaison agency of the Contracting State which has received an application for benefits under its laws shall

inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

1. In the application of Article 13 of the Agreement the following shall apply:

(*a*) The Swiss liaison agency shall notify the United States liaison agency of months in which a person made contributions during any year in which periods of coverage were completed under Swiss laws. A record of the total number of months of contributions in any such year shall be provided where the actual contribution months are not known.

(*b*) The Swiss liaison agency shall also notify the United States liaison agency of the amount of the person's creditable income in any year for which periods of contributions were completed under Swiss laws. The amount of the income to be reported for any such year may be derived from the contributions paid during that year.

2. Benefits awarded by the agency of the United States under Article 13 of the Agreement shall be recomputed in accordance with the laws of the United States to take account of additional periods of coverage completed under the laws of either Contracting State. An application for such a recomputation shall be required only where the additional periods of coverage have been completed under Swiss laws.

3. Periods of coverage completed after the last computation base year provided under United States laws shall not be considered in determining the ratio referred to in Article 13.3 of the Agreement.

Chapter 4

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 21 of the Agreement.

Article 7

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 8

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 9

1. Where administrative assistance is requested under Article 15 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed.

2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 10

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done, at Bern on December 20th, 1979, in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the
United States of America:

For the Swiss Federal
Social Insurance Office:

RICHARD D. VINE

ALBERT GRANACHER

* * * * * * *

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Government of the United States of America and
The Government of the United Kingdom of Great Britain and Northern Ireland.

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

ARTICLE 1

For the purpose of this Agreement:

1. "Territory" means,
as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam and American Samoa, and
as regards the United Kingdom, England, Scotland, Wales, Northern Ireland, and also the Isle of Man and the Islands of Jersey, Guernsey, Alderney, Herm and Jethou; and references to the "United Kingdom" or to "territory" in relation to the United Kingdom shall include the Isle of Man, Jersey, Guernsey, Alderney, Herm and Jethou where appropriate;
2. "Laws" means,
the laws specified in Article 2 of this Agreement, or regulations or Orders emanating from those laws, which are applicable in the territory of a Party or in any part thereof;
3. "Competent Authority" means,
as regards the United States, the Secretary of Health and Human Services, and
as regards the United Kingdom, the Secretary of State for Social Services, the Department of Health and Social Services of Northern Ireland, the Isle of Man Board of Social Security, the Social Security Committee of the States of Jersey or the States of Guernsey Insurance Authority, as the case may require;
4. "Agency" means,
as regards the United States, the Social Security Administration, and
as regards the United Kingdom, the Departmental and independent authorities duly appointed to decide the matter in question;
5. "Period of coverage" means,
as regards the United States, a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage under the laws of the United States, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage, and
as regards the United Kingdom, it means an insurance period;
6. "Benefit" means,
any benefit, pension or allowance provided for in the laws of either Party, including any increase of, or any additional amount payable with a benefit, pension or allowance;
7. As regards the United Kingdom:

(*a*) "insurance period" means,
a contribution period or an equivalent period:

(*b*) "contribution period" means,
a period in respect of which contributions appropriate to the benefit in question are payable, have been paid or treated as paid;

(*c*) "equivalent period" means,
a period for which contributions appropriate to the benefit in question have been credited;

(*d*) "survivor's benefit" means,
widow's allowance, widowed mother's allowance and widow's pension;

(*e*) "child's survivor benefit" means,
guardian's allowance and child's special allowance;

(*f*) "laws on coverage" means,
the laws and regulations relating to the imposition of liability for the payment of social security contributions.

ARTICLE 2

1. For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections; and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(b) As regards the United Kingdom,

(i) the Social Security Acts 1975 to 1982 and the Social Security (Northern Ireland) Acts 1975 to 1982;

(ii) the Social Security Acts 1975 to 1982 (Acts of Parliament) as applied to the Isle of Man by Orders made under the provisions of the Social Security Act 1982 (an Act of Tynwald);

(iii) the Social Security (Jersey) Law 1974;

(iv) the Social Insurance (Guernsey) Law 1978;

and the laws which were consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them.

2. The Agreement shall apply also to any law which supersedes, replaces, amends, supplements or consolidates the laws specified in paragraph 1 of this Article.

3. Unless the Parties agree otherwise, as regards the United Kingdom, this Agreement:

(a) shall apply only to benefits described in the laws specified in paragraph (1)(b) of this Article at the date of entry into force of this Agreement and for which specific provision is made in this Agreement; and

(b) shall not apply to any laws which relate to a branch of Social Security not covered by the laws specified in paragraph 1(b) of this Article unless the two Parties make an agreement to that effect.

4. This Agreement shall not apply to Regulations on Social Security of the institutions of the European Communities or to any convention or other international agreement on social security which either Party has concluded with a third party or to any laws or regulations which amend the laws specified in paragraph 1 of this Article for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its laws the provisions of any other convention or agreement which that Party has concluded with a Third Party.

ARTICLE 3

A person who is or has been subject to the laws of one Party and who resides within the territory of the other Party shall, together with his dependents, receive equal treatment with nationals of the other Party in the application of the laws of the other Party regarding the payment of benefits.

PART II

Provisions on Coverage

ARTICLE 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Parties shall, with respect to that employment, be subject to the laws on coverage of only that Party. Where a person is subject only to the laws on coverage of the United Kingdom in accordance with this paragraph, those laws shall apply to him as if he were ordinarily resident in the territory of the United Kingdom.

2. Where a person who is covered under the laws on coverage of one Party and is employed by an employer in the territory of that Party is sent by that employer to work in the territory of the other Party, the person shall by[1] subject only to the laws on coverage of the former Party, as if he were employed in the territory of the former Party, provided that the period of work in the territory of the latter Party is not expected to exceed 5 years, or such longer period as may be agreed upon by the Competent Authorities in a particular case. This paragraph does not apply to employment as an officer or member of a crew ship or aircraft.

3. A person who would otherwise be covered under the laws on coverage of both Parties with respect to self-employment performed in the territory of either Party

---

[1] As in original. Probably should be "be".

shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

4. Where a person is employed under the laws on coverage of one Party and self-employed under the laws on coverage of the other Party for the same activity, he shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.

5. A person who would otherwise be covered under the laws on coverage of both Parties with respect to employment as an officer or member of a crew on a ship or aircraft shall, in respect of that employment, be subject only to the laws on coverage of the United Kingdom if he ordinarily resides in the territory of the United Kingdom, and only to United States laws on coverage if he ordinarily resides in the territory of the United States.

6. A person who ordinarily resides in the territory of the United Kingdom and who is not employed or self-employed shall be subject to the laws on coverage of only the United Kingdom with respect to Social Security contributions.

ARTICLE 5

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Notwithstanding Article 4, nationals of one of the Parties who are employed by the National Government of that Party in the territory of the other Party and to whom the provisions mentioned in paragraph 1 of this Article do not apply, shall be subject to the laws on coverage of only the first Party, as if they were employed in the territory of that Party. For the purposes of the United States, employment by the National Government shall include employment by an instrumentality of the United States Government.

ARTICLE 6

The Competent Authorities of the two parties may grant an exception to the provisions in this Part, in respect of particular persons or categories of persons, provided that the affected persons will be subject to the laws on coverage of one of the Parties.

PART III

Benefit Provisions

ARTICLE 7

1. Except as otherwise provided in this Agreement, any provision of United States laws which restricts entitlement to or payment of cash benefits for persons who are not nationals of the United States solely because such persons reside outside or are absent from the territory of the United States shall not be applicable to persons who reside in the territory of the United Kingdom.

2. Subject to the provisions of paragraph 3 of this Article, a person who would be entitled to receive an old age pension, a retirement pension or a survivor's benefit under the laws of the United Kingdom if he were in the United Kingdom shall be entitled to receive that pension or benefit while he ordinarily resides in the territory of the United States, as if he were in the United Kingdom.

3. A person who is entitled to receive an old age pension, a retirement pension or a survivor's benefit under the laws of the United Kingdom and who would be entitled to receive an increase in the rate of that pension or benefit if he were in the United Kingdom shall, after the date of entry into force of Part III of this Agreement, be entitled to receive any such increase prescribed after that date by those laws if he ordinarily resides in the territory of the United States; but nothing in this paragraph shall confer entitlement to receive any such increases prescribed before that date by those laws.

4. Where under the laws of the United Kingdom, an increase of any of the benefits for which provision is made in this Agreement would be payable for a dependant if the dependant were in the United Kingdom, it shall be payable while the dependant is in the territory of the United States.

Chapter A

Provisions Applicable to the United States

ARTICLE 8

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage already credited under United States laws for the purpose of establishing entitlement to benefits under this Article.[2]

2. In determining eligibility for benefits under paragraph 1, the Agency of the United States shall credit:

(*a*) one quarter of coverage for every thirteen contributions or fraction thereof paid or credited in any contribution year before April 6, 1975 under the laws specified in Article 2.1(*b*)(i) and (ii); and

(*b*) one quarter of coverage for every thirteen contributions calculated in accordance with Article 9.5, or fraction thereof, paid or credited in any United Kingdom tax year beginning after April 5, 1975 under the laws specified in Article 2.1(*b*)(i)and (ii); and

(*c*) one quarter of coverage for each annual contribution factor of 0.25 or any part thereof which has been derived under the laws specified in Article 2.1(*b*)(iii;[3] and

(*d*) one quarter of coverage for every thirteen contributions or fraction thereof paid or credited in any contribution year under the laws specified in Article 2.1(*b*)(iv);

provided, however, that periods of coverage credited under United States laws shall not exceed four quarters of coverage in any calendar year.

3. Where entitlement to a benefit under United States laws is established according to the provisons of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on the duration of a worker's periods of coverage completed under United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

Chapter B

Provisions Applicable to the United Kingdom

ARTICLE 9

1. For the purpose of calculating entitlement to a retirement pension or a survivor's benefit under the laws specified in Article 2.1(*b*)(i) and (ii) of this Agreement, for each quarter of coverage credited to a person under the laws of the United States before 6 April 1975 the person shall be treated as having paid thirteen contributions under the laws specified in Article 2.1(*b*)(i) and (ii).

2. For the purpose of calculating entitlement to a basic retirement pension or a basic survivor's benefit provided under the laws specified in Article 2.1(*b*)(i) and (ii) of this Agreement, for each quarter of coverage credited under the laws of the United States after 5 April 1975 a person shall be treated as having paid thirteen contributions on earnings equivalent to the lower earnings level under the laws specified in Article 2.1(*b*)(i) and (ii).

3. For the purpose of calculating the appropriate contribution factor to establish entitlement to old age pension or survivor's benefit under the laws specified in Article 2.1(*b*)(iii) of this Agreement, a person shall be treated for each quarter of coverage credited under the laws of the United States as having paid contributions which derive an annual contribution factor of 0.25.

4. For the purpose of calculating entitlement to old age pension or survivor's benefit under the laws specified in Article 2.1(*b*)(iv) of this Agreement, each quarter of coverage credited under the laws of the United States shall be treated as if it had been a contribution period of thirteen weeks completed as an employed or self-employed person under the laws specified in Article 2.1(*b*)(iv).

---

[2] As in original. Sentence appears to be incomplete.

[3] As in original. Closing parenthesis missing.

5. For the purpose of converting into periods of coverage any earnings-factor achieved in any tax year commencing on or after 6 April 1975 under the laws specified in Article 2.1(*b*)(i) and (ii) of this Agreement, the Competent Authority of the United Kingdom shall divide the earnings-factor by that tax year's lower earnings limit. The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated shall be treated as representing the number of weeks in the insurance period completed in that tax year under those laws.

ARTICLE 10

1. Subject to the provisions of paragraph 2 of this Article, where a person is entitled to an old age pension or a basic retirement pension, as the case may be, under the laws of the United Kingdom, otherwise than by virtue of the provisions of this Agreement, that pension shall be payable and the provisions of Article 11, except for Article 11.3, of this Agreement shall not apply under these laws.

2. For the purpose of paragraph 1 of this Article, a lower-rate Category B retirement pension payable to a married woman by virtue of the contributions of her husband shall be treated as if it were not a retirement pension and the words "old age pension or a retirement pension" should be construed as referring only to a contributory pension.

ARTICLE 11

1. The provisions of this Article shall apply for the purpose of determining entitlement to old age pension, or basic retirement pension, as the case may be, under the laws of the United Kingdom or under the laws of any one part of the territory of the United Kingdom, under which there is no entitlement in respect of a person in accordance with the provisions of Article 10 of this Agreement.

2. In accordance with Article 9 of this Agreement, the relevant Agency of the United Kingdom shall determine:

(*a*) the amount of the theoretical pension which would be payable if all the periods of coverage completed by that person under the laws of both Parties had been completed under its own laws;

(*b*) the proportion of that theoretical pension which bears the same relation to the whole as the total of the periods of coverage completed by him under its laws bears to the total of all the periods of coverage which he has completed under the laws of both Parties.

The proportionate amount thus calculated shall be the pension actually payable to the person by the Agency of the United Kingdom.

3. Where a person's periods of coverage completed under the Laws of Jersey total less than an annual contribution factor of 1.00; or, under the Laws of Guernsey total less than 50 weeks; or, in all other cases, total less than one qualifying year (or total less than 50 weeks if the periods all were before 6 April 1975), then:

(*a*) these periods shall be aggregated as if they had all been completed under the laws of any part of the territory of the United Kingdom under which a pension is payable or would be payable if the periods were aggregated; and

(*b*) where two such pensions are or would be payable, the periods shall be aggregated under the laws of that part of the territory of the United Kingdom under which the pension is first payable or, if they are both first payable on the same date, under the laws of that part which pays the greater amount on that date.

4. For the purpose of applying the provisions of paragraph 2 of this Article, the Agency of the United Kingdom shall take account only of periods of coverage, completed under the laws of either Party, which would be taken into account for the determination of pensions under its laws if they were completed under its laws and, in relation to a woman, shall, where appropriate, take into account in accordance with those laws periods of coverage completed by her husband.

5. Where a period of coverage credited to a person under the laws of the United States after 5 April 1975 falls within a relevant United Kingdom tax year which is not a qualifying year, those periods of coverage may be reallocated to any other tax year commencing on or after 6 April 1975 if this would be to the advantage of that person.

6. The provisions of paragraph 2 of this article shall not apply to any graduated pension payable under the laws of the United Kingdom, or to any increase of pension payable in respect of deferred retirement, or to any increase of benefit payable in respect of a dependent child, but any such pension or increase, or increases, shall be added to the amount of pension which has been calculated and has become payable in accordance with paragraph 2.

7. Where a period of coverage completed under the laws of the United Kingdom overlaps with a period of coverage credited under the laws of the United States, the

United Kingdom shall take account only of the period of coverage completed under its laws.

ARTICLE 12

The provisions of Articles 10 and 11 of this Agreement shall apply also in a claim for basis[4] survivor's benefit under the laws of the United Kingdom, with such modifications as the differing nature of the benefits may require.

ARTICLE 13

Where a person in the United Kingdom is entitled to a child's survivor benefit in respect of a child in the United Kingdom, that benefit shall not cease to be payable solely because that person and, or, the child is in the territory of the United States.

ARTICLE 14

1. The provisions of paragraphs 2 to 5 of this Article shall apply to claims for invalidity benefit under the laws of the United Kingdom other than under the laws of Jersey.

2. Subject to the provisions of paragraph 4 of this Article, a person in the territory of the United State[5], other than a person who is entitled to disability insurance benefits under the laws of the United States solely by virtue of his United States coverage, shall be entitled to receive invalidity benefit under the laws of the United Kingdom as if he had received sickness benefit for 168 days under those laws, provided that:

(*a*) he has been credited with at least four quarters of coverage under the laws of the United States during the two years preceding the onset of his incapacity and he has been credited with a period of coverage under those laws since his last arrival in the territory of the United States; and

(*b*) he has completed a period of coverage in any one tax year under the laws of the United Kingdom which amounts to at least fifty times the lower earnings level for that year and, at the date on which he last left the United Kingdom, he satisfied the minimum contribution conditions applicable to sickness benefit under the laws of the United Kingdom, or, in a case where the claim for benefit is made under the laws of Guernsey, he has completed a period, or periods, of coverage which amount to at least fifty weeks under the laws of Guernsey and, at the date on which he left Guernsey, he satisfied the minimum contribution conditions applicable to sickness benefit under those laws; and

(*c*) at the date on which his incapacity commenced he had not been absent from the territory of the United Kingdom for a period of five years from the end of the United Kingdom tax year in which he last completed a compulsory period of coverage under the laws of the United Kingdom; and

(*d*) he is incapacitated for work and has been so incapacitated for a continuous period of 168 days, excluding Sundays.

The rate of invalidity benefit payable by virtue of this paragraph shall be ascertained in accordance with the provisions of paragraph 3 of this Article.

3. Taking account of sub-paragraphs (*a*) and (*b*) of this paragraph, the relevant Agency of the United Kingdom shall ascertain the proportion of the standard rate of invalidity benefit provided under the laws of the United Kingdom in the same ratio as the total of the periods of coverage completed under its laws bears to the total periods of coverage completed under the laws of both Parties. For the purpose of this paragraph, "standard rate of invalidity benefit" means the standard rate of benefit including any age allowance and any additional amount or amounts payable in respect of a dependent or dependents, but does not include the amount of any additional component or graduated pension which shall be payable, where appropriate, in addition to any invalidity benefit calculated in accordance with this paragraph:

(*a*) the provisions of paragraphs 4, 5, 6 and 7 of Article 11 and the provisions of Article 9 of this Agreement shall apply to periods of coverage credited under the laws of the United States as if the references in those Articles to an old age pension, a retirement pension or a pension were references to invalidity benefit;

(*b*) for the purposes of calculating the proportion of benefit referred to above, no account shall be taken of any period of coverage completed after the day on which his incapacity commenced.

The amount of benefit calculated in accordance with the above provisions of this paragraph shall be the amount of invalidity benefit actually payable to that person.

4. Invalidity benefit under the laws of the United Kingdom shall not be payable to a person in the territory of the United States by more than one part of the territory of

---

[4] As in original. Probably should be "basic".

[5] As in original. Probably should be "States".

the United Kingdom for the same period. Where such benefit would otherwise be payable by more than one such part, that benefit shall be payable only under the laws of the territory under which that person last completed a period of coverage, or, where two such periods have been completed simultaneously, under the laws of the territory in which he is, or last was, resident.

5. Subject to the provisions of paragraph 11 of this Article, invalidity benefit shall not be payable under the laws of the United Kingdom to a person in the United Kingdom if he is entitled to receive disability insurance benefits under the laws of the United States solely by virtue of his coverage under those laws.

6. The provisions of paragraphs 7 and 9 of this Article shall apply to claims for sickness benefit or invalidity benefit, as the case may be, under the laws of Jersey.

7. Subject to the provisions of paragraph 4 of this Article, a person in the territory of the United States, other than a person who is entitled to disability insurance benefits under the laws of the United States solely by virtue of his United States coverage, shall be deemed to have received sickness benefit for 168 days under the laws of Jersey and shall be entitled to receive sickness benefit for a further 144 days provided that:

(*a*) he as[6] been credited with at least four quarters of coverage under the laws of the United States during the two years preceding the onset of his incapacity and he has been credited with a period of coverage under those laws since his last arrival in the territory of the United States; and

(*b*) he has completed a period of coverage under the laws of Jersey which amounts to at least an annual contribution factor of 1.00 and, at the date on which he last left Jersey he satisfied the minimum contribution conditions applicable to sickness benefit under the laws of Jersey; and

(*c*) at the date on which his incapacity commenced he had not been absent from Jersey for a period of five years from the end of the quarter in which he last was liable to complete a period of coverage under the laws of Jersey; and

(*d*) he is incapacitated for work and has been so incapacitated for a continuous period of 168 days, excluding Sundays.

The rate of sickness benefit payable by virtue of this paragraph shall be ascertained in accordance with the provisions of paragraph 8 of this Article.

8. Taking account of sub-paragraphs (*a*) and (*b*) of this paragraph, the Agency of Jersey shall ascertain the proportion of the standard rate of sickness benefit provided under the laws of Jersey in the same ratio as the total of the periods of coverage completed under its laws bears to the total of the periods of coverage completed under both its laws and the laws of the United States. For the purpose of this paragraph, "standard rate of sickness benefit" means the standard rate of benefit including any additional amount payable therewith in respect of a dependant:

(*a*) the provisions of paragraphs 4 and 7 of Article 11 and the provisions of Article 9 of this Agreement shall apply to periods of coverage credited under the laws of the United States as if the references in those Articles to an old age pension, a retirement pension or a pension were references to sickness benefit;

(*b*) for the purpose of calculating the proportion of benefit referred to above, no account shall be taken of any period of coverage completed after the day on which his incapacity commenced.

The amount of benefit calculated in accordance with the above provisions of this paragraph shall be the amount of sickness benefit actually payable to that person.

9. A person entitled to sickness benefit under the laws of Jersey by virtue of the provisions of paragraphs 7 and 8 of this Article, shall, if still incapacitated for work after he has received sickness benefit for 144 days, be deemed to have received sickness benefit for 312 days under the laws of Jersey and shall be entitled to receive invalidity benefit under those laws while he is in the territory of the United States, provided that he remains incapacitated for work. The rate of invalidity benefit payable by virtue of this paragraph shall be ascertained by applying the provisions of paragraph 8 of this Article as if the references therein to sickness benefit were references to invalidity benefit.

10. Subject to the provisions of paragraph 11 of this Article, a person in the territory of Jersey shall not be entitled to receive invalidity benefit or sickness benefit under the laws of Jersey if he is entitled to receive disability insurance benefits under the laws of the United States solely by virtue of his coverage under those laws.

11. A person in the territory of the United Kingdom shall be entitled to receive invalidity benefit under its laws, or sickness benefit under the laws of Jersey, without regard to paragraph 5 or paragraph 10 of this Article provided that he satisfies the conditions applicable to that benefit under those laws and he was resident in the territory of the United Kingdom for a period of five years prior to the onset of the incapacity which gives rise to the invalidity benefit entitlement, or, as the case may be, sickness benefit entitlement.

---

[6] As in original. Probably should be "has".

12. Notwithstanding any other provision of this Article, a person in the territory of the United States who is subject to the laws on coverage of the United Kingdom by virtue of any of the Articles 4 to 6 of this Agreement and who satisfies the contribution conditions applicable to sickness benefit under those laws shall, for the purpose of determining his entitlement to invalidity benefit under those laws:

(*a*) be treated as if he were in the territory of the United Kingdom; and

(*b*) each day of incapacity for work while in the territory of the United States may, where appropriate, be treated as if it were a day for which he had received sickness benefit under the laws of the United Kingdom.

13. Any restriction which would otherwise be applicable under the laws of the United Kingdom in the rate of benefit payable to persons who are not ordinarily resident in the territory of the United Kingdom shall not apply to persons in the territory of the United States who are in receipt of invalidity benefit under the laws of the United Kingdom by virtue of the provisions of this Agreement.

PART IV

Miscellaneous Provisions

ARTICLE 15

The Competent Authorities of the two Parties shall:

(*a*) Make such administrative arrangements as may be necessary for the application of this Agreement;

(*b*) Designate liaison agencies for the implementation of this Agreement;

(*c*) Communicate to each other information concerning the measures taken by them for the application of this Agreement; and

(*d*) Communicate to each other, as soon as possible, all information concerning changes in their respective laws insofar as these changes affect the application of this Agreement.

ARTICLE 16

The Competent Authorities and Agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to any exceptions to be agreed upon in an administrative agreement.

ARTICLE 17

1. Where the laws of one Party provide that any certificate or other document which is submitted under the laws of that Party shall be exempt, wholly or partly, from taxes, fees or charges, including consular and administrative fees, the exemption shall also apply to any certificate or document which is submitted under the laws of the other Party or under the provisions of this Agreement.

2. Copies of documents which are certified as true and exact copies by the Agency of one Party shall be accepted as true and exact copies by the Agency of the other Party, without further certification. The Agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

ARTICLE 18

1. A written application for benefits filed with an Agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant (*a*) requests that it be considered an application under the laws of the other Party, or (*b*) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Party.

2. An applicant may request that an application filed with an Agency of one Party be effective on a different date under the laws of the other Party within the limitations of and in conformity with the laws of the other Party.

3. For the purposes of United States laws, the provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date on which Part III enters into force.

ARTICLE 19

1. A written appeal to, or against, a determination made by the Agency of one Party may be validly filed with an Agency of the other Party. The appeal shall be dealt with according to the appeal procedure of the laws of the Party which has jurisdiction.

2. Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the Agency of that Party, but which is instead filed within the same period with the Agency of the other Party, shall be considered to have been filed on time.

ARTICLE 20

In any case to which the provisions of Article 18 or Article 19 apply, the Agency to which the claim, notice or written appeal has been submitted shall transmit it without delay to the Agency of the other Party.

ARTICLE 21

1. Disagreements between the two Parties regarding the interpretation or application of this Agreement shall, as far as possible, be resolved through agreement of the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities, it shall be submitted, at the request of either Party, for arbitration in accordance with procedures to be agreed upon by the Competent Authorities.

ARTICLE 22

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement.

PART V

Transitional and Final Provisions

ARTICLE 23

Upon the entry into force of Part III of this Agreement, the Notes exchanged between the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom and the Ambassador of the United States of America on 23 and 25 September 1969 shall cease to have effect and shall be replaced by this Agreement; provided, however, that any right to benefit outside the territory of the United Kingdom acquired by a person in accordance with the provisions of the Notes exchanged shall be maintained; and provided that no person shall suffer any loss of rights outside the territory of the United Kingdom which he had under the Notes exchanged or any such rights he would have had if those Notes exchanged had not been replaced by this Agreement.

ARTICLE 24

1. In the application of Part III of this Agreement, consideration shall be given to periods of coverage and other events which occurred prior to the entry into force of Part III, insofar as they are relevant to rights under the laws specified in Article 2.1. However, neither Party shall take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be taken into account under its laws.

2. No provision of this Agreement shall confer any right:

(*a*) to receive a benefit for any period before the date of entry into force of Part III of the Agreement, or

(*b*) to receive a lump-sum death benefit under the laws of the United States if the person died before the date of entry into force of Part III of the Agreement.

3. Determinations made before the entry into force of Part III of this Agreement concerning entitlement to benefits shall not affect rights arising under Part III.

4. The period of work referred to in Article 4.2 shall be measured beginning on the date on which Part II of this Agreement enters into force.

5. Notwithstanding the provisions of Article 27 concerning the effective date of Part III of this Agreement, Article 7.1 shall enter into force on the date on which Parts I, II, IV and V of this Agreement enter into force.

ARTICLE 25

The application of this Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to its entry into force.

ARTICLE 26

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one Party to the other Party.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Parties shall make arrangements dealing with rights in the process of being acquired.

ARTICLE 27

1. This Agreement, except for Part III, shall enter into force on the first day of the second month following the month in which each Government has received from the other Government written notification that all statutory and constitutional requirements have been complied with for the entry into force of this Agreement.

2. Part III of this Agreement shall enter into force on the first day of the thirty-sixth month following the month in which Parts I, II, IV and V of this Agreement enter into force.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 13th day of February 1984.

For the Government of the
United States of America:

Charles H. Price II.

For the Government of the
United Kingdom of Great
Britain and Northern Ireland:

—— ——

Administrative Agreement for the Implementation of the Agreement on Social Security Between the United States of America and the United Kingdom of Great Britain and Northern Ireland of 13 February 1984

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland.

In accordance with the provision of Article 15 of the Agreement on Social Security between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland of 13 February 1984, hereinafter referred to as the "Agreement", have agreed as follows:

Chapter A

General Provisions

ARTICLE 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

ARTICLE 2

1. The liaison agencies referred to in Article 15 of the Agreement shall be:
   - (*a*) for the United States, the Social Security Administration,
   - (*b*) for the United Kingdom,
     - (i) In Great Britain, the Department of Health and Social Security, Overseas Branch, Newcastle upon Tyne NE98 1YX;

(ii) in Northern Ireland, the Department of Health and Social Services, Overseas Branch, Castle Buildings, Stormont, Belfast, Northern Ireland BT4 3HH;

(iii) in the Isle of Man, the Isle of Man Board of Social Security, Hill Street, Douglas, Isle of Man;

(iv) in Jersey, the States of Jersey Social Security Department, Philip Le Feuvre House, La Motte Street, St. Helier, Jersey, Channel Islands;

(v) Guernsey, the States Insurance Authority, Bordage House, 7-9 The Bordage, St. Peter Port, Guernsey, Channel Islands.

2. The liaison agencies designated in paragraph 1 shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

CHAPTER B

Provisions on Coverage

ARTICLE 3

1. Where the laws of a Party are applicable in accordance with Articles 4, 5 or 6 of the Agreement, the Agency of that Party, upon request of the employer, employee or self-employed person, shall issue a certificate stating that the concerned employee or self-employed person is covered by those laws. The certificate shall be proof that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Party. The liaison agencies of the Parties shall co-operate and assist one another as appropriate in ensuring that persons are covered under the laws of one or the other Party.

2. The certificate referred to in paragraph 1 shall be issued by the appropriate liaison agency of either Party.

CHAPTER C

Provisions on Benefits

ARTICLE 4

1. The liaison agency of the Party with which an application for benefits is first filed in accordance with Article 18 of the Agreement shall inform the liaison agency of the other Party of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the Agency of the other Party to establish the right of the applicant to benefits according to the provisions of Part III of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Party which receives an application filed with an Agency of the other Party shall without delay provide the liaison agency of the other Party with such evidence and other available information as may be required to complete action on the claim.

3. The Agency of the Party with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

ARTICLE 5

In the application of Article 8 of the Agreement, the liaison agency of the United Kingdom shall notify the United States liaison agency of the weeks or years in which a person is credited with periods of coverage under the laws of the United Kingdom, along with such other information as may be necessary to determine the amount of the person's benefit.

ARTICLE 6

In the application of Article 9 of the Agreement, the United States liaison agency shall notify the appropriate liaison agency of the United Kingdom of the periods of coverage completed under United States laws, along with such other information as may be necessary to determine the amount of the person's benefit.

CHAPTER D

Miscellaneous Provisions

ARTICLE 7

In accordance with the measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the Agency of one Party shall, upon request of the Agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

ARTICLE 8

The liaison agencies of the two Parties shall assist each other as far as possible in the compilation and exchange of statistics on the administration of the Agreement.

ARTICLE 9

1. Where the Agency of a Party requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Party in whose territory the claimant or beneficiary is present, in accordance with the rules of the Agency making the arrangements and at the expense of the Agency which requests the examination.
2. Upon request, the agency of either Party shall furnish without expense to the Agency of the other Party any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.
3. Amounts owed under Article 16 of the Agreement and paragraph 1 of this Article shall be reimbursed upon presentation of a statement of expenses.

ARTICLE 10

Unless authorized by the national statutes of the United States or the national legislation of the United Kingdom, as the case may be, information about an individual which is transmitted in accordance with the Agreement to one Party by the other Party shall be used exclusively for purposes of implementing the Agreement. Such information received by a Party shall be governed, as the case may be, by the national statutes of the United States, or the national legislation of the United Kingdom, for the protection of privacy and confidentiality of personal data.

ARTICLE 11

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done in duplicate at London this 13th day of February 1984

For the Government of the
United States of America:

CHARLES H. PRICE II.

For the Government of the
United Kingdom of Great
Britain and Northern Ireland:

BARONESS YOUNG.